

ENTERED

F 2302

San Francisco Law Library

436 CITY HALL

No. *162059*

EXTRACT FROM RULES

Rule 1a. Books and other legal material may be borrowed from the San Francisco Law Library for use within the City and County of San Francisco, for the periods of time and on the conditions hereinafter provided, by the Judges of all courts situated within the City and County, by Municipal, State and Federal officers, and any member of the State Bar in good standing and practicing law in the City and County of San Francisco. Each book or other item so borrowed shall be returned within five days or such shorter period as the Librarian shall require for books of special character, including books constantly in use, or of unusual value. The Librarian may, in his discretion, grant such renewals and extensions of time for the return of books as he may deem proper under the particular circumstances and to the best interests of the Library and its patrons. Books shall not be borrowed or withdrawn from the Library by the general public or by law students except in unusual cases of extenuating circumstances and within the discretion of the Librarian.

Rule 2a. No book or other item shall be removed or withdrawn from the Library by anyone for any purpose without first giving written receipt in such form as shall be prescribed and furnished for the purpose, failure of which shall be ground for suspension or denial of the privilege of the Library.

Rule 5a. No book or other material in the Library shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured, and any person violating this provision shall be liable for a sum not exceeding treble the cost of replacement of the book or other material so treated and may be denied the further privilege of the Library.

N. 3001

No. 14955

United States
Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeals from the United States District Court for the
Northern District of California.
Southern Division

FILED

MAY 18 1956

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.-5-4-56

PAUL P. O'BRIEN, CLERK

No. 14955

**United States
Court of Appeals
For the Ninth Circuit**

**EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,**

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeals from the United States District Court for the
Northern District of California,
Southern Division**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Appeal:

Certificate of Clerk to Record on.....	366
Notice of	40, 41, 46
Notice of, Amended.....	54
Statement of Points on.....	369, 370, 372

Attorneys, Names and Addresses of.....	1
--	---

Bill of Particulars.....	15
--------------------------	----

Certificate of Clerk to Record on Appeal.....	366
---	-----

Indictment	3
------------------	---

Judgment and Commitment, Boyd.....	50
------------------------------------	----

Judgment and Commitment, Bruno.....	52
-------------------------------------	----

Judgment and Commitment, Ege.....	48
-----------------------------------	----

Minutes of the Court:

June 23, 1955.....	7
July 7, 1955.....	8
July 8, 1955.....	8
July 14, 1955.....	9
August 4, 1955.....	10, 17, 18
September 26, 1955.....	24
September 27, 1955.....	26
September 28, 1955.....	27

INDEX	PAGE
Minutes of the Court—(Continued):	
September 29, 1955.....	28
October 28, 1955.....	37
Motion in Arrest of Judgment, Bruno.....	39
Motion for Bail.....	55
Motion for Bill of Particulars.....	11
Motion by Ege to Dismiss the First Count of Indictment	11
Motion for New Trial, Boyd.....	33
Motion for New Trial, Bruno.....	34
Motion for New Trial, Ege.....	31
Motion for Separate Trial of Counts in Indict- ment, Boyd	21
Motion for Separate Trial of Counts in Indict- ment, Bruno	24
Notice of Appeal, Boyd.....	40
Notice of Appeal, Bruno.....	41
Notice of Appeal, Ege and Boyd.....	46
Notice of Appeal, Amended, Boyd.....	54
Notice of Motion for Separate Trial of Counts in Indictment, Boyd.....	19
Notice of Motion for Separate Trial of Counts in Indictment, Bruno.....	22
Request for Questions to Be Propounded on Voir Dire Examination of Jurors.....	44

INDEX

PAGE

Statement of Points on Which Appellant Boyd Intends to Rely.....	372
Statement of Points on Which Appellant Bruno Intends to Rely.....	369
Statement of Points on Which Appellant Ege Intends to Rely.....	370
Stays of Execution.....	43
Substitution of Attorneys Filed August 2, 1955.	13
Substitution of Attorneys Filed January 16, 1956	373
Transcript of Proceedings.....	57
Exceptions to Instructions.....	356
Instructions to the Jury.....	334
Witness, Defendant's:	
Ege, Edward Raymond	
—direct	283
—cross	298
Witnesses, Government's:	
Andress, Ray M.	
—direct	240
—cross	248, 252, 259
Bell, Constance Marie	
—direct	58
—cross	92, 148, 162, 168
—redirect	194, 269

INDEX	PAGE
Witnesses, Government's—(Continued)	
Briley, Charles W.	
—direct	209
—cross	213, 266
Ellingson, J. W.	
—direct	201
Giomi, Gene	
—direct	195
—cross	197, 200
Goldberg, John	
—direct	220
—cross	227
Moe, John C.	
—direct	231
—cross	237
Rathjen, George W.	
—direct	204
—cross	208
Thompson, George H., Jr.	
—direct	215
Wright, Kenneth Ward	
—direct	219
Verdict, Boyd	30
Verdict, Bruno	31
Verdict, Ege	30

NAMES AND ADDRESSES OF ATTORNEYS

GEORGE T. DAVIS,
98 Post Street,
San Francisco, California,
For Defendant, Ege.

LEO R. FRIEDMAN,
San Francisco, California,
For Defendant, Boyd.

LILLIE AND BRYANT, and
WALTER M. CAMPBELL,
668 So. Bonnie Brae Street,
Los Angeles 57, California;

ROBERT B. McMILLAN,
625 Market Street,
San Francisco, California,
For Defendant, Bruno.

LLOYD H. BURKE,
United States Attorney,
Post Office Building,
San Francisco, California,
For Plaintiff.

In the United States District Court for the Northern
District of California, Southern Division

Criminal No. 34576

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD RAYMOND EGE, JOSEPH BOYD,
Alias JOE BOYD, and JOSEPH VICTOR
BRUNO,

Defendants.

(Violation: Title 18 U.S.C., Section 2421—Inter-
state Transportation of Female for Immoral
Purposes; Title 18 U.S.C., Section 371—Con-
spiracy.)

INDICTMENT

First Count: (Title 18, United States Code, Section
2421.) The Grand Jury charges That:

Edward Raymond Ege, defendant herein, did on
or about the 17th day of October, 1953, in the City
and County of San Francisco, State and Northern
District of California, knowingly transport in inter-
state commerce, to wit, from San Francisco, Cali-
fornia, to Scottsdale, Arizona, a woman for the pur-
pose of prostitution.

Second Count: (Title 18, United States Code, Sec-
tion 371.) The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias
Joe Boyd, and Joseph Victor Bruno, at a time and

place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts.

Overt Acts

1. In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the

sum of approximately \$700 from Constance Marie Bell.

11. In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. GORDON TYNDALL,
Foreman.

Penalty

1st count: (18 USC 2421)—Fine of not more than \$5,000 and/or five years imprisonment.

2nd count: (18 USC 371)—Fine of not more than \$10,000 and/or five years imprisonment.

Bail: \$10,000.00 each.

[Endorsed]: Filed June 15, 1955.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 23rd day of June, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

This case came on this day ex parte. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant Joseph Boyd, alias Joe Boyd, was present in custody of the United States Marshal and with his attorney, Emmet Hagerty, Esq.

Defendant was arraigned and stated his true name as charged.

On motion of Mr. Hagerty, Ordered amount of bail for release of defendant be reduced from \$10,000 to \$5,000.

Ordered case continued to June 30, 1955, to plead.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 7th day of July, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

In this case John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant Joseph Boyd, alias Joe Boyd, was present with his attorney, Emmett Haggerty, Esq.

The defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to indictment filed herein, which said plea was ordered entered.

Ordered case continued to July 14, 1955, to be set for trial.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of Califor-

nia, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Friday, the 8th day of July, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

This case came on regularly this day for hearing on motion to reduce bail. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant, Edward Raymond Ege, was present on bond and with his attorney, R. A. Zarick, Esq.

On motion of Mr. Zarick and with the consent of Mr. Sparrow, Ordered that the amount of bond for appearance of defendant Edward Raymond Ege be reduced from \$10,000 to \$2,500.

Ordered case continued to July 14, 1955, for arraignment of said defendant.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 14th day of July, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

In this case defendant Edward Raymond Ege was present on bond and with his counsel. Defendant was duly arraigned upon the indictment filed herein, stated his true name to be as contained therein. Ordered case continued to August 4, 1955, for hearing on motion to dismiss Count One of indictment and for entry of plea.

Defendant Joseph Victor Bruno was present with his counsel, Robert B. McMillan, Esq., and Walter Campbell, Esq. Defendant was duly arraigned upon the indictment filed herein, stated his true name to be as charged. Ordered that Mr. Campbell's motion to reduce bail to \$5,000 be granted. Ordered case continued to August 4, 1955, for entry of plea and hearing on motion for bill of particulars.

On motion of counsel for defendant Joseph Boyd, alias Joe Boyd, who was present on bond, Ordered case continued to August 4, 1955, for hearing on motion for bill of particulars, also to be set for trial.

[Title of District Court and Cause.]

**MOTION BY DEFENDANT EDWARD RAY-
MOND EGE TO DISMISS THE FIRST
COUNT OF INDICTMENT**

The Defendant, Edward Raymond Ege, moves that the first count of indictment be dismissed on the following grounds:

That the indictment does not state facts sufficient to constitute an offense against the United States.

/s/ ROBERT A. ZARICK,
Attorney for Defendant.

[Endorsed]: Filed July 15, 1955.

[Title of District Court and Cause.]

MOTION FOR BILL OF PARTICULARS

Comes Now the defendant, Joseph Victor Bruno, and respectfully moves the Court for an order requiring the United States to furnish defendant, within a time to be therein specified, a written bill of particulars as to the following matters alleged in the indictment herein:

I.

First Count

1. The name of the person described as "a woman."

2. Whether or not the woman referred to in the First Count is one of the women referred to in the Second Count and/or the overt acts thereunder.

II.

Second Count

1. The names of the women whom the defendants are alleged to have conspired to transport between California and Arizona.

2. The names of the women whom the defendants are alleged to have conspired to transport between California and Nevada.

3. The date and circumstances of each alleged act of transportation between California and Arizona, and California and Nevada.

4. The exact or approximate day of the month upon which each of the overt acts are alleged to have taken place.

5. The day or an approximation thereof, in October, 1953, when the defendant, Joseph Victor Bruno, allegedly drove Constance Marie Bell from Bakersfield, California, to Delano, California.

Dated: July 22, 1955.

LILLIE AND BRYANT and
WALTER M. CAMPBELL,

By /s/ WALTER M. CAMPBELL,
Attorneys for Defendant,
Joseph Victor Bruno.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 23, 1955.

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

The defendant, Edward Raymond Ege, hereby substitutes Gregory S. Stout, 400 Crocker Bldg., San Francisco, California, as his attorney in the above-entitled action.

Dated this 28th day of July, 1955.

/s/ EDWARD R. EGE.

I hereby consent to the substitution of Gregory S. Stout as attorney for defendant, Edward Raymond Ege, in the above-entitled action in my place and stead.

Dated this 1st day of Aug., 1955.

/s/ ROBERT A. ZARICK.

I agree to be substituted in the place of Robert A. Zarick, Esq., in the above-entitled action as attorney for defendant Edward Raymond Ege.

Dated this 28th day of July, 1955.

/s/ GREGORY S. STOUT.

Gregory S. Stout
Attorney at Law
Crocker Building
San Francisco 4
YUkon 2-4828

July 28, 1955.

Honorable Edward Murphy,
Judge, United States District Court,
Post Office Building,
7th and Mission Streets,
San Francisco, California.

Re: U. S. v. Ege, et al., No. 34576.

Dear Sir:

Mr. Edward Raymond Ege has retained me to represent him in the above-entitled matter. It is my understanding that Robert A. Zarick, has previously appeared for Mr. Ege.

Enclosed to be filed in these proceedings is a formal Substitution of Attorneys.

Because of summer vacation plans which had been committed for prior to my retention as attorney, I will be unable to attend Mr. Ege's arraignment which is to take place on Thursday, August 4, 1955. One of my associates, either Leslie C. Gillen, John R. Golden or James W. Halley, will appear on that date in my place.

I request that the arraignment be continued until Wednesday, August 10, 1955.

Very truly yours,

/s/ GREGORY S. STOUT.

GSS MJR

Enc.

cc: Hon. John Sparrow,

Asst. U. S. District Attorney.

[Endorsed]: Filed August 2, 1955.

[Title of District Court and Cause.]

BILL OF PARTICULARS

Comes now the United States of America, through its attorneys, Lloyd H. Burke, United States Attorney for the Northern District of California, and John P. Sparrow, Assistant United States Attorney, and gives particulars as to the following matters alleged in the indictment herein.

I.

First Count

1. The name of the person described as "the woman" is Constance Marie Bell.

2. The woman referred to in the first count, namely, Constance Marie Bell, is one of the women referred to in the second count and the overt acts thereunder.

II.

Second Count

1. Constance Marie Bell is one of the women whom the defendants conspired to transport between California and Arizona.

2. Constance Marie Bell is one of the women whom the defendants conspired to transport between California and Nevada.

3. The approximate day of the month on which each of the overt acts are alleged to have taken place is as follows:

- (1) On or about June 15, 1953.
- (2) On or about September 15, 1953.
- (3) On or about September 15, 1953.
- (4) On or about October 13, 1953.
- (5) On or about October 20, 1953.
- (6) On or about October 22, 1953.
- (7) On or about October 22, 1953.
- (8) On or about October 25, 1953.
- (9) On or about October 27, 1953.
- (10) On or about November 5, 1953.
- (11) On or about November 10, 1953.
- (12) On or about December 7, 1953.
- (13) On or about December 20, 1953.
- (14) On or about December 22, 1953.

Dated: August 4, 1955.

LLOYD H. BURKE,
United States Attorney;

/s/ JOHN P. SPARROW,
Assistant United States Attorney, Attorneys for
Plaintiff.

[Endorsed]: Filed August 4, 1955.

United States District Court for the Northern District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 4th day of August, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

This case came on regularly this day for entry of plea. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant, Edward Raymond Ege, was present in proper person and with James W. Haley, Esq., appearing for Gregory Stout, Esq., Attorney for defendant.

The defendant was called to plead and thereupon said defendant entered a plea of "Not Guilty" to the indictment filed herein, which said plea was ordered entered.

Bill of Particulars filed by the United States Attorney, and counsel for defendant served with copy.

No hearing held on defendant's motion to dismiss Count 1 of indictment.

Ordered case continued to September 26, 1955, for trial by jury.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 4th day of August, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

This case came on regularly this day to be set for trial. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant, Joseph Boyd, alias Joe Boyd, was present in proper person and with his attorney, Emmett Hagerty, Esq.

Bill of Particulars filed by the United States Attorney, and counsel for defendant served with copy.

Ordered case continued to September 26, 1955, for trial by jury.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Courtroom

thereof, in the City and County of San Francisco, on Thursday, the 4th day of August, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Louis E. Goodman,
District Judge.

[Title of Cause.]

This case came on regularly this day for plea, also hearing on motion for bill of particulars. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendant was present with his attorney, Robert B. McMillan, Esq.

The defendant was called to plead and thereupon entered a plea of "Not Guilty" to the indictment herein, which said plea was ordered entered.

Bill of Particulars, filed, the United States Attorney, and counsel for defendant served with copy.

Ordered case continued to September 26, 1955, for trial by jury.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SEPARATE TRIAL
OF COUNTS IN INDICTMENT

To the United States of America and to Lloyd H. Burke, United States Attorney:

You Will Please Take Notice that the defendant, Joseph Boyd, will, on the 26th day of September,

1955, at the time the above-entitled matter is called for trial, move the above-entitled Court for an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure to grant a separate trial on the second count of the indictment for the following reasons:

1. Count 1 charges the defendant Ege alone with the substantive offense of transporting a woman in interstate commerce for purposes of prostitution; Count 2 charges the defendants Ege, Boyd and Bruno with conspiring to transport women in interstate commerce for purposes of prostitution.

2. It would appear that the facts and the offense alleged in Count 1 are separate and apart from and were not performed in furtherance of the conspiracy alleged in Count 2 for the reason that if it were so performed, then and in that event the defendants Boyd and Bruno would have been named as principals therein by reason of having aided and abetted in the commission of the alleged offense by encouraging and advising through the medium of the alleged conspiracy.

3. That there would be admissible in evidence against the defendant Ege on the substantive count many matters which would not be admissible as against the defendants Boyd and Bruno, but which would greatly prejudice the latter despite precautionary instructions to the jury by the trial judge; among such matters, although not limited thereto, are alleged admissions, statements, and alleged acts

of the defendant Ege relative to the substantive offense and not made pursuant to the alleged conspiracy, proof of the alleged offense itself, proof of other alleged substantive offenses of a similar character, etc.

4. That the defendant Boyd would be prejudiced by the joinder for trial of the offenses alleged in said counts for said reasons.

Dated: September 21, 1955.

/s/ EMMET F. HAGERTY,
Attorney for Defendant,
Joseph Boyd.

[Endorsed]: Filed September 21, 1955.

[Title of District Court and Cause.]

MOTION FOR SEPARATE TRIAL OF
COUNTS IN INDICTMENT

Comes now the defendant Joseph Boyd and moves the above-entitled Court for an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure to grant a separate trial on the second count of the indictment.

Respectfully submitted,

/s/ EMMET F. HAGERTY,
Attorney for Defendant,
Joseph Boyd.

Service of copy acknowledged.

[Endorsed]: Filed September 21, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SEPARATE TRIAL
OF COUNTS IN INDICTMENT

To the United States of America and to Lloyd H.
Burke, United States Attorney:

You Will Please Take Notice that the defendant Joseph Victor Bruno will, on the 26th day of September, 1955, at the time the above-entitled matter is called for trial, move the above-entitled Court for an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure to grant a separate trial on the second count of the indictment for the following reasons:

1. Count 1 charges the defendant Ege alone with the substantive offense of transporting a woman in interstate commerce for purposes of prostitution; Count 2 charges the defendants Ege, Boyd and Bruno with conspiring to transport women in interstate commerce for purposes of prostitution.

2. It would appear that the facts and the offense alleged in Count 1 are separate and apart from and were not performed in furtherance of the conspiracy alleged in Count 2 for the reason that if it were so performed, then and in that event the defendants Boyd and Bruno would have been named as principals therein by reason of having aided and abetted in the commission of the alleged offense by encouraging and advising through the medium of the alleged conspiracy.

3. That there would be admissible in evidence against the defendant Ege on the substantive count many matters which would not be admissible as against the defendants Boyd and Bruno, but which would greatly prejudice the latter despite precautionary instructions to the jury by the trial judge; among such matters, although not limited thereto, are alleged admissions, statements, and alleged acts of the defendant Ege relative to the substantive offense and not made pursuant to the alleged conspiracy, proof of the alleged offense itself, proof of other alleged substantive offenses of a similar character, etc.

4. That the defendant Bruno would be prejudiced by the joinder for trial of the offenses alleged in said counts for said reasons.

Dated: September 20, 1955.

LILLIE AND BRYANT and
WALTER M. CAMPBELL,

ROBERT B. McMILLAN,
Attorneys for Defendant
Bruno;

/s/ WALTER M. CAMPBELL,
By /s/ ROBERT B. McMILLAN.

Service of copy acknowledged.

[Endorsed]: Filed September 21, 1955.

[Title of District Court and Cause.]

MOTION FOR SEPARATE TRIAL OF
COUNTS IN INDICTMENT

Comes now the defendant Joseph Victor Bruno and moves the above-entitled Court for an order pursuant to Rule 14 of the Federal Rules of Criminal Procedure to grant a separate trial on the second count of the indictment.

Respectfully submitted,

LILLIE AND BRYANT and
WALTER M. CAMPBELL,
ROBERT B. McMILLAN,

By /s/ ROBERT B. McMILLAN,
Attorneys for Defendant,
Joseph Victor Bruno.

Service of copy acknowledged.

[Endorsed]: Filed September 21, 1955.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of September, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

This case came on regularly this day for trial. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendants were present with respective counsel, Gregory Stout, Esq., for Edward Raymond Ege; Walter Campbell, Esq., and Robert B. McMillan, Esq., for Joseph Victor Bruno; and Emmet Hagerty, Esq., for Joseph Boyd, alias Joe Boyd.

In the absence of the jury, the Court heard a motion to try the counts of the indictment separately, which motion, after hearing counsel, was Ordered Denied. Motion to dismiss Count 2 also Ordered Denied.

The Court proceeded to impanel a jury as follows:

1. Deborah T. Spillane,
2. Joseph A. Nuno,
3. Mrs. Adele H. Duckett,
4. Anthony J. Conda,
5. Jerome C. Draper, Jr.,
6. Mrs. Dorothy Beesley,
7. Mrs. Alice Hawley,
8. Paul J. Keever,
9. Mrs. Melba Bernard,
10. Warne C. Marty,
11. Mrs. Matilda Kogan,
12. John R. Lai.

Mr. Sparrow made an opening statement to the Court and jury on behalf of the Government. Mr. Campbell made an opening statement on behalf of defendant Joseph Victor Bruno. The other counsel reserved their opening statements until the conclusion of the plaintiff's case.

Constance Marie Bell was sworn and testified on behalf of the Government.

The hour of adjournment having arrived, and the Court having admonished the jury, the further trial of this case was ordered continued to Tuesday, September 27, 1955, at 10:00 o'clock a.m.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Tuesday, the 27th day of September, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed.

Constance Marie Bell completed her testimony. Gene Giomi, J. W. Ellings, George W. Rathjen, Charles W. Briley, George H. Thomas, Jr., Kenneth Ward Wright, John Goldberg, John C. Moe and Ray Andress were sworn and testified on behalf of the Government. Thereupon the Government rested.

The hour of adjournment having arrived, and the Court having admonished the jury, the further trial of this case was ordered continued to Wednesday, September 28, 1955, at 10:00 o'clock a.m.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Wednesday, the 28th day of September, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

In the absence of the jury, and the Government having rested, counsel for the several defendants made motions for judgments of acquittal or to dismiss as to each defendant.

Motion by Mr. Stout to elect as to Count 1 as to defendant Edward Raymond Ege was Ordered Denied.

Ordered that motions to strike certain testimony as to certain defendants will be granted in certain respects and covered in the instructions. Ordered that the motions to dismiss or for judgment of acquittal stand submitted.

The jury was returned to the Courtroom. Defendants Joseph Boyd and Joseph Victor Bruno rested their cases. Defendant Edward Raymond Ege was sworn and testified, and thereupon defendant Edward Raymond Ege rested his case.

The hour of adjournment having arrived, and the Court having admonished the jury, the further trial of this case was ordered continued to Thursday, September 29, 1955, at 10:00 o'clock a.m.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Thursday, the 29th day of September, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed.

The case was duly argued, and after instructions from the Court, the jury retired at 3:30 p.m. to deliberate upon its verdict. At 4:40 p.m. the jury returned into Court, and all jurors being present, and upon being asked if they had agreed upon a verdict, rendered the following written verdicts which were by the Court ordered filed and recorded on the minutes of the Court, and which verdicts are as follows:

“We, the Jury, find Joseph Victor Bruno, the defendant at the bar, Guilty as to Count 1.

“PAUL J. KEEVER,
“Foreman.”

“We, the Jury, find Joseph Boyd, alias Joe Boyd, the defendant at the bar, Guilty as to Count 2.

“PAUL J. KEEVER,
“Foreman.”

“We, the Jury, find Edward Raymond Ege, the defendant at the bar, Guilty as to Count 1; Guilty as to Count 2.

“PAUL J. KEEVER,
“Foreman.”

Ordered that the jury be discharged from further consideration of this case and from attendance upon the Court until notified.

Motions heretofore made for verdict of acquittal
Ordered Denied.

Ordered defendants remanded to custody of United States Marshal, case referred to Probation Officer, and continued to October 28, 1955, for judgment.

[Title of District Court and Cause.]

VERDICT OF THE JURY
(Edward Raymond Ege)

We, the Jury, find Edward Raymond Ege, the defendant at the bar, Guilty as to Ct. 1; Guilty as to Ct. 2.

/s/ PAUL J. KEEVER,
Foreman.

[Endorsed]: Filed September 29, 1955.

[Title of District Court and Cause.]

VERDICT OF THE JURY
(Joseph Boyd)

We, the Jury, find Joseph Boyd, alias Joe Boyd, the defendant at the Bar, Guilty as to Ct. 2.

/s/ PAUL J. KEEVER,
Foreman.

[Endorsed]: Filed September 29, 1955.

[Title of District Court and Cause.]

VERDICT OF THE JURY

(Joseph Victor Bruno)

We, the Jury, find Joseph Victor Bruno, the defendant at the bar, Guilty as to Ct. 2.

/s/ PAUL J. KEEVER,
Foreman.

[Endorsed]: Filed September 29, 1955.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

To the Honorable Edward P. Murphy, Judge of the United States District Court for the Northern District of California, Southern Division, and to the Clerk Thereof; and to the Above-Named Plaintiff, and to Lloyd Burke, United States District Attorney, and to John Sparrow, Assistant United States District Attorney:

You and Each of You Will Please Take Notice that the above-named defendant, Edward Raymond Ege, will move the above-entitled Court to vacate and set aside the verdict of the jury heretofore rendered in the above-entitled action, and any judgment entered thereon, and to grant a new trial in the above-entitled action upon the following grounds:

1. The court erred in denying defendant Ege's motion for acquittal made at the conclusion of the evidence.

2. The verdict is contrary to and not supported by substantial evidence.

3. The court erred in refusing to exclude persons summoned by United States of America as witnesses during the course of the testimony of other witnesses.

4. The court erred in sustaining and overruling objections to questions addressed to the witness Constance Marie Bell.

5. The court erred in refusing to instruct the jury that the testimony of the witnesses John C. Moe and Ray M. Andress was not binding upon the defendant Ege.

6. The court erred in refusing to limit the effect upon defendant Ege of the testimony of the witnesses George H. Thomas, Jr., Kenneth Ward Wright, J. W. Ellingson, George W. Rathjen and Charles W. Briley.

7. The court erred in charging and refusing to charge the jury as requested.

8. The court erred when it refused defendant Ege's motion for a special verdict upon each of the overt acts set forth in the Indictment.

9. Defendant Ege was substantially prejudiced and deprived of a fair trial by reason of the misconduct of the court in that said court demeaned and was openly contemptuous of counsel all in the presence of the jury the effect of which could only have

indicated to the jury that the court believed defendant Ege to be guilty of the charges.

Dated this 3rd day of October, 1955.

/s/ GREGORY S. STOUT,
Attorney for Defendant,
Edward Raymond Ege.

Service of copy acknowledged.

[Endorsed]: Filed October 4, 1955.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

To the Honorable Edward P. Murphy, Judge of the United States District Court for the Northern District of California, Southern Division, and to the Clerk Thereof; and to the Above-Named Plaintiff, and to Lloyd Burke, United States District Attorney, and to John Sparrow, Assistant United States District Attorney:

You and Each of You Will Please Take Notice that the above-named defendant, Joseph Boyd, will move the above-entitled Court to vacate and set aside the verdict of the jury heretofore rendered in the above-entitled action, and any judgment entered thereon, and to grant a new trial in the above-entitled action upon the following grounds:

1. The Court erred in denying defendant Boyd's motion for judgment of acquittal made at the conclusion of the Government's case, and for judgment notwithstanding the verdict made after the return of the verdict.

2. The verdict is contrary to and not supported by substantial evidence.

3. The Court erred in refusing to exclude persons summoned by United States of America as witnesses during the course of the testimony of other witnesses.

4. The Court erred in sustaining and overruling objections to questions addressed to the witness Constance Marie Bell.

5. The Court erred in refusing to limit the effect upon defendant Boyd of the testimony of the witness Kenneth Ward Wright.

6. The Court erred when it refused defendant Boyd's motion for special findings by the jury upon each of the overt acts set forth in the Indictment.

Dated this 3rd day of October, 1955.

/s/ EMMET F. HAGERTY,
Attorney for Defendant,
Joseph Boyd.

Service of copy acknowledged.

[Endorsed]: Filed October 4, 1955.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

The defendant, Joseph Victor Bruno, moves the Court for a new trial for the following reasons:

1. The Court erred in denying said defendant's motion for judgment of acquittal, made at the close of Plaintiff's case in chief.

2. The Court erred in denying said defendant's motion for judgment of Acquittal, made at the close of all of the evidence in the case.

3. The Court erred in denying said defendant's motion for judgment of acquittal, renewed after the verdict and the discharge of the jury.

4. The verdict is contrary to the weight of the evidence.

5. The verdict is not supported by substantial evidence.

6. The evidence is insufficient to establish the existence of the alleged conspiracy as set forth in count two of the indictment.

7. The evidence is insufficient to establish that said defendant Bruno became a party to the alleged conspiracy.

8. The Court erred in refusing to exclude witnesses from the courtroom and in permitting material witnesses for the United States to remain within the courtroom during the trial of the cause.

9. The Court erred in denying the motions of defendant Bruno to strike the testimony of witnesses John C. Moe and Ray M. Andress, as not binding on him, since same was hearsay, statements made outside the presence of said defendant Bruno, made after the termination of the alleged conspiracy

and not in furtherance thereof; and in refusing to instruct the jury accordingly.

10. The Court erred in refusing to limit the effect upon said defendant Bruno of the testimony of witnesses George H. Thomas, Jr., Kenneth Ward Wright, J. W. Ellingson, George W. Rathjen and Charles W. Briley.

11. The Court erred in charging, and in refusing to charge as requested, the jury, relative to limiting and restricting the testimony of the witnesses named in foregoing specifications 9 and 10.

12. The Court erred in refusing defendant Bruno's motion for a special verdict upon each of the overt acts set forth in the indictment.

13. That there was a fatal variance between the proof, the indictment and the bill of particulars.

14. The Court erred in denying the motion of defendant Bruno to grant a separate trial on the second count of the indictment.

Dated October 4, 1955.

LILLIE AND BRYANT and
WALTER M. CAMPBELL,
ROBERT B. McMILLAN,

By /s/ ROBERT B. McMILLAN,
Attorneys for Defendant,
Joseph Victor Bruno.

[Endorsed]: Filed October 4, 1955.

Receipt of copy acknowledged.

United States District Court for the Northern
District of California, Southern Division

At a Stated Term of the United States District Court for the Northern District of California, Southern Division, held at the Courtroom thereof, in the City and County of San Francisco, on Friday, the 28th day of October, in the year of our Lord one thousand nine hundred and fifty-five.

Present: The Honorable Edward P. Murphy,
District Judge.

[Title of Cause.]

This case came on regularly this day for hearing on motions for new trial and pronouncing of judgment. John P. Sparrow, Esq., Assistant United States Attorney, was present on behalf of the United States. The defendants were present with counsel.

After hearing Walter Campbell, Esq., on behalf of defendant Joseph Victor Bruno, regarding motion for new trial, and the same motion being submitted without argument as to defendants Edward Raymond Ege and Joseph Boyd, Ordered that said motions for new trial be, and each is hereby, Denied. Oral motions in arrest of judgment as to each defendant were submitted and Ordered Denied.

The defendants were called for judgment. The Court having asked the defendants whether they have anything to say why judgment should not be

pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, It is Adjudged that defendants are guilty as charged and convicted.

It Is Adjudged that the defendant Edward Raymond Ege is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of:

Count 1—Five (5) Years.

Count 2—Five (5) Years.

Further Ordered that said term of imprisonment imposed on Count 2 run from and after the Expiration of term of imprisonment as to Count 1 of indictment.

Total Imprisonment—Ten (10) Years.

The Court recommends commitment to a hospital type institution to be designated by U. S. Attorney General.

It Is Adjudged that the defendant Joseph Boyd, alias Joe Boyd, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Five (5) Years on Count 2 of indictment.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

It Is Adjudged that the defendant Joseph Victor Bruno is hereby committed to the custody of the At-

torney General or his authorized representative for imprisonment for a period of Five (5) Years on Count 2 of indictment.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

Ordered that judgment be entered herein as to each defendant accordingly.

Counsel for defendants filed motions for stay of execution of judgment, which stay was Ordered Denied.

Counsel for defendants made a motion for release of defendants on bail pending appeal as to each defendant, which motion was Ordered Denied.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT

The defendant, Joseph Victor Bruno, moves the Court to arrest judgment herein and not pronounce the same for the following reasons:

1. That the indictment, count two thereof, does not state facts sufficient to constitute an offense against the laws of the United States.
2. That the indictment, count two thereof, is not sufficient in form or substance to enable this defendant to plead the judgment in bar of another prosecution for the same offense.

Dated October 28, 1955.

LILLIE AND BRYANT and
WALTER M. CAMPBELL,
ROBERT B. McMILLAN,

By /s/ WALTER M. CAMPBELL,
Attorneys for Defendant,
Joseph Victor Bruno.

[Endorsed]: Filed October 28, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant:

JOSEPH BOYD,
81 Ina Court,
San Francisco, Calif.

Name and address of appellant's attorney:

EMMET F. HAGERTY, ESQ.,
1106 Central Tower,
703 Market Street,
San Francisco, Calif.

Offense: Violation of Title 18 U.S.C., Section 2421—Interstate Transportation of Female for Immoral Purposes; and Title 18 U.S.C., Section 371—Conspiring to violate Title 18 U.S.C., Section 2421.

Found guilty on Second Count (Title 18 U.S.C., Section 371).

Sentenced: October 28, 1955.

Name of institution where now confined: County Jail, One Dunbar Lane, San Francisco, California.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Pursuant to Rule 38 (a) (2), Federal Rules of Criminal Procedure, we hereby serve notice that we do not elect to enter upon the service of the sentence pending appeal.

Dated: Oct. 28, 1955.

/s/ JOSEPH BOYD.

EMMET F. HAGERTY,

Attorney for Defendant and
Appellant.

Certified true copy.

[Endorsed]: Filed October 28, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant:

JOSEPH VICTOR BRUNO,
1141 Roosevelt,
Monterey, California.

Names and addresses of Appellant's attorneys:

LILLIE AND BRYANT, and
WALTER M. CAMPBELL,
668 South Bonnie Brae Street,
Los Angeles 57, California.

ROBERT B. McMILLAN,
625 Market Street,
San Francisco 5, California.

Offense: 18 U. S. Code, Section 371, Conspiracy to
Violate 18 U. S. Code, Section 2421.

Concise statement of Judgment or Order giving date
of any sentence: Oct. 28, 1955. Said defendant
adjudged Guilty Count 2 of Indictment; sen-
tenced to imprisonment for 5 years.

Name of institution where now confined, if not on
bail: County Jail, San Francisco, California.

I, the above-named appellant, hereby appeal to
the United States Court of Appeals for the Ninth
Circuit from the judgment above mentioned.

Dated October 28, 1955.

/s/ JOSEPH VICTOR BRUNO,
Appellant.

Certified true copy.

[Endorsed]: Filed October 28, 1955.

[Title of District Court and Cause.]

STAYS OF EXECUTION

Defendants above named on October 28, 1955, were sentenced by Edward P. Murphy, Judge of the United States District Court for the Northern District of California, Southern Division, to serve 10 and 5 years, respectively, in a Federal Penal Institution.

On October 28, 1955, pursuant to Rule 37 of the Federal Rules of Criminal Procedure defendants filed Notice pending determination of their motion for bail upon appeal defendants elect not to commence service of their sentences.

Dated this 28th day of October, 1955.

/s/ EDWARD R. EGE.

/s/ GREGORY S. STOUT,
Attorney for Edward Raymond Ege.

/s/ JOSEPH BOYD.

/s/ EMMET F. HAGERTY,
Attorney for Joseph Boyd.

[Endorsed]: Filed October 28, 1955.

[Title of District Court and Cause.]

REQUEST FOR QUESTIONS TO BE PRO-
POUNDED ON VOIR DIRE EXAMINA-
TION OF JURORS

On behalf of the defendant Joseph Victor Bruno it is respectfully requested that the following questions be propounded to each prospective juror individually by the Court:

(1) What is your occupation?

(a) (If juror is retired.) What was your former occupation?

(b) (If juror is a housewife or widow.) What is (was) your husband's occupation?

(2) Do you have any near relatives or close friends employed by the Government, other than in the Armed Forces?

(a) If so, state their relationship to you and the nature of their Government employment.

(3) Is the nature of the charge contained in the indictment—that is, the charge that these defendants conspired to transport women between California and Arizona, and California and Nevada for purposes of prostitution—such as to bias or prejudice you against the defendants before hearing any evidence in the case?

(4) Is there anything in your personal religious or moral beliefs which would not enable you to give

these defendants a fair trial; that is, listening impartially to all the evidence presented both for and against the defendants and applying the rules of law as given to you by the Court before coming to any conclusion as to the guilt or innocence of each of the defendants?

(5) Searching your consciences carefully, would you be willing to accept a juror in the same frame of mind as yourself, if you were in the position of any of these defendants charged with the crime of which they are charged? If you have the slightest doubt in this regard, do not hesitate to make it known, in justice and fairness to the defendants.

(6) While it is your duty to weigh the evidence and determine the facts, the Court is the sole judge of the law as it may apply to this case, and the Court will instruct you from time to time and at the conclusion of the evidence of the rules of law which you are to apply to the evidence. Are you willing to accept and follow the Court's instructions as to the law, even though they may conflict with some preconceived ideas you may have of what the law is or should be?

(7) Bearing in mind the nature of the charge and the questions propounded to you, and knowing your own frame of mind and conscience, if for any reason whatsoever you feel you cannot serve impartially both as to the Government and as to these defendants, please indicate by raising your hand and you will be excused without further questioning.

Respectfully submitted,

LILLIE AND BRYANT and
WALTER M. CAMPBELL,
ROBERT B. McMILLAN,

By /s/ WALTER M. CAMPBELL,
Attorneys for Defendant,
Joseph Victor Bruno.

[Endorsed]: Filed October 28, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL
(Criminal Action)

Edward Raymond Ege, San Francisco, California.

Gregory S. Stout, 400 Crocker Building, San Francisco, California, attorney for defendant Edward Raymond Ege.

Joseph Boyd, alias Joe Boyd, San Francisco, California.

Emmet Hagerty, 703 Market Street, San Francisco, California, attorney for defendant Joseph Boyd, alias Joe Boyd.

As to defendant Edward Raymond Ege, Violation of 18 U.S.C., Sections 2421 and 371.

As to defendant Joseph Boyd, alias Joe Boyd, Violation of 18 U.S.C., Section 371.

Judgment: As to Edward Raymond Ege,
years imprisonment on Count I of the indictment charging violation of 18 U.S.C., Section 2421, and \$. fine; years imprisonment on Count II of the indictment charging violation of 18 U.S.C., Section 371, and \$. fine, which sentence is con. . . . to the sentence imposed in Count I.

As to defendant Joseph Boyd, alias Joe Boyd, years imprisonment on Count II of the indictment charging violation of 18 U.S.C., Section 371, and \$. fine.

Appellants are federal prisoners in County Jail No. 1, San Francisco, California.

We, the above-named appellants, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-named judgment.

Dated this 28th day of October, 1955.

/s/ EDWARD RAYMOND EGE.

/s/ GREGORY S. STOUT,

Attorney for Edward Raymond Ege.

/s/ JOSEPH BOYD.

/s/ EMMET F. HAGERTY,

Attorney for Joseph Boyd.

Certified true copy.

[Endorsed]: Filed October 31, 1955.

United States District Court for the Northern
District of California, Southern Division

No. 34576

UNITED STATES OF AMERICA,

vs.

EDWARD RAYMOND EGE.

JUDGMENT AND COMMITMENT

On this 28th day of October, 1955, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of following violations:

Count 1—Title 18, United States Code, Sec. 2421.

(Defendant Edward Raymond Ege on or about October 17, 1953, at San Francisco, California, did knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for purpose of prostitution.)

Count 2—Title 18, United States Code, Sec. 371
—Conspiracy,

(Said defendant, et al., conspired to transport women between California & Arizona, and California and Nevada, for purpose of prostitution.)

as charged in Counts 1 & 2 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 1—Five (5) Years;

Count 2—Five (5) Years.

Further Ordered that said term of imprisonment imposed on Count 2 run from and after the Expiration of term of imprisonment as to Count 1 of indictment.

Total Imprisonment—Ten (10) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ EDWARD P. MURPHY,

United States District Judge.

The Court recommends commitment to a hospital type institution to be designated by U. S. Attorney General.

C. W. CALBREATH,
Clerk.

Examined By:

/s/ JOHN P. SPARROW,
Assistant U. S. Attorney.

[Endorsed]: Filed November 1, 1955.

Entered November 4, 1955.

United States District Court for the Northern
District of California, Southern Division

No. 34576

UNITED STATES OF AMERICA,

vs.

JOSEPH BOYD, Alias JOE BOYD.

JUDGMENT AND COMMITMENT

On this 28th day of October, 1955, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a Verdict of Guilty of the offense of violation of Title 18, United States Code, Section 371—Conspiracy,

(Defendant Joseph Boyd, alias Joe Boyd, et al., conspired to transport women between California & Arizona, and California and Nevada, for the purpose of prostitution. In furtherance of said conspiracy and to effect the objects

thereof, said defendant did certain overt acts in June, 1953, at San Francisco, California, & at various other times and places.)

as charged in Count 2 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of—

Five (5) Years on Count 2 of indictment.

(Indictment—2 counts. Defendant not named in Count 1.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ EDWARD P. MURPHY,
United States District Judge.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

C. W. CALBREATH,
Clerk.

Examined by:

/s/ JOHN P. SPARROW,
Assistant U. S. Attorney.

[Endorsed]: Filed November 1, 1955.

Entered November 4, 1955.

United States District Court for the Northern
District of California, Southern Division

No. 34576

UNITED STATES OF AMERICA,

vs.

JOSEPH VICTOR BRUNO.

JUDGMENT AND COMMITMENT

On this 28th day of October, 1955, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation of Title 18, United States Code, Sec. 371—Conspiracy,

(Defendant Joseph Victor Bruno, et al., conspired to transport women between California & Arizona, and California and Nevada, for purpose of prostitution. In furtherance of said

conspiracy and to effect the objects thereof, said defendant did certain overt acts in October, 1953, at San Francisco, California.)

as charged in Count 2 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Five (5) Years on Count 2 of indictment.

(Indictment—2 counts. Defendant not named in Count 1.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ EDWARD P. MURPHY,
United States District Judge.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

C. W. CALBREATH,
Clerk.

Examined by:

/s/ JOHN P. SPARROW,
Assistant U. S. Attorney.

[Endorsed]: Filed November 1, 1955.

Entered November 4, 1955.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

Name and address of appellant: Joseph Boyd, 81
Ina Court, San Francisco, Calif.

Name and address of appellant's attorney: Emmet
F. Hagerty, Esq., 1106 Central Tower, 703
Market Street, San Francisco, Calif.

Offense: Violation of Title 18, U.S.C., Section 2421
—Interstate Transportation of Female for Im-
moral Purposes; and Title 18 U.S.C. Section
371—Conspiring to violate Title 18 U.S.C. Sec-
tion 2421.

Found guilty on Second Count (Title 18 U.S.C.
Section 371).

Sentenced: October 28, 1955.

Name of institution where now confined: County
Jail, One Dunbar Lane, San Francisco, Cali-
fornia.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated: November, 1955.

JOSEPH BOYD.

EMMET F. HAGERTY,
Attorney for Defendant and
Appellant.

Certified true copy.

[Endorsed]: Filed November 1, 1955.

United States Court of Appeals
for the Ninth Circuit

EDWARD R. EGE, JOSEPH B. BOYD and
JOSEPH BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR BAIL

Before: Denman, Chief Judge, and Bone and
Pope, Circuit Judges.

Per Curiam:

Ege, Boyd and Bruno apply for bail pending appeal. Ege was convicted of violating 18 U.S.C.

§2421, transporting a woman in interstate commerce for purposes of prostitution. Ege, Boyd and Bruno were convicted of violating 18 U.S.C. §371 by conspiring to transport women for such purposes.

There is a substantial question, as required by F. R. Crim. P. 46 (a) (2), justifying bail in Bruno's case. There was no direct evidence to show he knew of the interstate transportation here involved, and it is questionable whether he is bound by Ege's actions in procuring prostitutes from out of state.

Ege and Boyd have not presented substantial questions justifying bail pending appeal.

Bruno is ordered released on bail in the sum of \$10,000 conditioned upon the requirements of our practice. Ege and Boyd's motions for bail are denied.

WILLIAM DENMAN,
Chief Judge.

WALTER L. POPE,
Circuit Judge.

A True Copy.

[Endorsed]: Filed November 17, 1955.

The United States District Court, Northern District
of California, Southern Division

No. 34576

Before: Hon. Edward P. Murphy, Judge.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD RAYMOND EGE, JOSEPH BOYD,
Alias JOE BOYD, and JOE VICTOR BRUNO,

Defendants.

REPORTER'S TRANSCRIPT

Monday, September 26, 1955

Appearances:

For the Government:

LLOYD H. BURKE,
U. S. Attorney, by
JOHN P. SPARROW,
Asst. U. S. Attorney.

For the Defendants:

Defendant Ege,
GREGORY S. STOUT, ESQ.,
Defendant Boyd,
EMMET F. HAGERTY, ESQ.,
Defendant Bruno,
WALTER CAMPBELL, ESQ., and
ROBERT B. McMILLAN, ESQ.

The Clerk: United States of America vs. Edward Raymond Ege, Joseph Boyd and Joe Victor Bruno.

(Motion made on behalf of the defendants for separation of two counts of the indictment for trial; motions denied.)

(The jury was duly empaneled and sworn.)

(Opening statements made on behalf of the government and the defendant Bruno.)

CONSTANCE MARIE BELL

called as a witness on behalf of the government, sworn.

The Clerk: Please state your name to the Court and jury.

A. Constance Marie Bell.

Direct Examination

By Mr. Sparrow:

Q. Is that the name under which you were born?

A. Yes.

Q. And can you tell us where you were born?

A. San Diego.

Q. What year? A. 1934.

Q. How long did you live in San Diego?

A. A few years.

Q. You say you lived a few years in San Diego?

A. Yes, sir. [3*]

Q. And after that where did you go?

A. San Francisco.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Constance Marie Bell.)

Q. Do you have any brothers or sisters?

A. Yes.

Q. How many brothers and sisters?

A. One brother and one sister.

Q. How do you stand agewise with them?

A. I am the oldest.

Q. You moved to San Francisco, you stated, two or three years after you were born, is that right?

A. Yes.

Q. And did you live with your parents or did you live somewhere else from that time on?

A. Part of the time with my parents and the rest of the time with other people.

The Court: You will have to speak louder.

Q. Part of the time with my parents and then the rest—I mean, with other people.

Q. (By Mr. Sparrow): By “other people” you mean you were in foster homes? A. Yes.

Q. About when did you enter a foster home, do you remember?

A. When I was about seven or eight.

Q. And thereafter how many years did you stay in a foster home? [4] A. Until I was 18.

Q. And during that period were you in one or more than one foster home?

A. I was in more than one.

Q. And during that period of time from 7 until 18 did you spend all or the greater portion of your time in San Francisco or did you spend it somewhere else? A. I spent it here, or mostly here.

Q. Mostly here. Where other than San Fran-

(Testimony of Constance Marie Bell.)

cisco can you remember spending any time in foster homes between 7 and 18?

A. In Oakland and Petaluma.

Q. About how long were you in each?

A. About six months.

Q. Six months each. So with those exceptions you have lived in San Francisco, is that correct, since you were about two or three years—since you were two or three years old? A. Yes.

Q. How many years of schooling did you complete, Connie?

Mr. Campbell: Objected to as immaterial.

The Court: Overruled.

A. Nine years.

Q. (By Mr. Sparrow): Nine years. And upon leaving school, after nine years, what did you do?

A. I went to work for California Physicians' Service.

Q. And about how old were you at that time? [5]

A. 17.

Q. And how long did you work for the California Physicians' Service?

A. About a year and a half.

Q. In what capacity? A. As a clerk.

Q. After that where did you work, if any place?

A. For the Wall Street Journal.

Q. In what capacity did you work there?

A. A typist-clerk.

Q. And did you work any place after the Wall Street Journal?

A. I worked at Hastings Department Store.

(Testimony of Constance Marie Bell.)

Mr. Campbell: Could you speak louder?

The Court: She worked at Hastings Department store.

Q. (By Mr. Sparrow): And thereafter where did you go, Connie?

A. I went—and I went to the Dance Follies.

Q. Beg your pardon?

A. I went to the Dance Follies.

Q. You went to the Dance Follies. Was that a school or——

A. No, it was a burlesque follies.

Q. Beg your pardon?

A. Burlesque Follies.

Q. Where is that?

A. Here in San Francisco.

Q. Was it while you were working there that you first met the [6] defendant Ege? A. Yes.

Q. And did you meet him there at the burlesque or some place else?

A. Met him some place else.

Q. Where was that? A. Sarong Club.

Q. Where was that, if you recall?

A. It's on Geary Street, I think.

Q. In San Francisco? A. Yes.

Q. How did you happen to meet the defendant Ege?

A. Well, this girl that was working there at the Follies knew him.

Q. And she introduced you, did she?

A. Yes.

(Testimony of Constance Marie Bell.)

Q. And what happened thereafter, as far as you and Ege are concerned?

Mr. Campbell: I am going to object, so far as the defendant Bruno is concerned.

The Court: Overruled. Let's establish the pattern here. I am going to allow all of this evidence in against all defendants. At the proper time you may make your motion and I will rule accordingly.

Mr. Campbell: Very well. [7]

Q. (By Mr. Sparrow): What happened between you and Ege after that meeting in the Sarong Club? Where did you go, and do, if anything?

A. We went out to his house.

Q. And where was that?

A. On Monterey Boulevard.

Q. In San Francisco? A. Yes.

Q. And was that on the occasion right after your initial meeting with him at the Sarong Club?

A. Yes.

Q. What happened out at Ege's house on Monterey Boulevard? Did you have any conversations with him?

Mr. Stout: Objected to as leading and suggestive.

The Court: Overruled.

A. Yes.

Q. (By Mr. Sparrow): What were those conversations about?

A. Oh, about—about the racket.

Q. About what?

The Court: About "the racket."

(Testimony of Constance Marie Bell.)

A. About the racket.

Mr. Stout: Move to strike, Your Honor, as the opinion and conclusion.

The Court: Overruled.

Mr. Campbell: If Your Honor please, may it be understood [8] that my objection is running to all of this line of testimony?

The Court: So understood.

“About the racket,” she said. What do you mean by “racket?”

Q. (By Mr. Sparrow): What do you mean by “racket”? A. Well——

Mr. Stout: That’s incompetent, irrelevant and immaterial.

The Court: Overruled. What do you mean by “racket”? Do you mean prostitution?

A. Prostitution.

The Court: All right.

Q. (By Mr. Sparrow): Could you state to the jury the substance of the conversation that he held with you about the subject of prostitution?

A. Oh, about the way it was run and how much they made.

Mr. Hagerty: Your Honor, might I make this objection at this time, following that of Mr. Campbell’s, that we would object that the corpus has not yet been established as to the conspiracy and we would like to enter an objection as to all the conversations this witness may have had with the co-defendant Ege as having no bearing, being incompetent, irrelevant, immaterial as to the defendant Joseph Boyd.

(Testimony of Constance Marie Bell.)

The Court: Overruled. As I have previously indicated in my remarks to Mr. Campbell, at a subsequent time which I consider appropriate I will take all of this evidence together [9] and try to sift the wheat from the chaff, if it becomes necessary.

Mr. Hagerty: That is what I meant, that our objection go——

The Court: Your objection has been stated adequately for the record. Now we will take an adjournment at this time, ladies and gentlemen, until two o'clock this afternoon.

(Statutory admonition to the jury.)

(Whereupon, an adjournment was taken until 2:00 p.m. this date.) [10]

Monday, September 26, 1955, at 2 P.M.

The Court: Proceed.

Q. (By Mr. Sparrow): Connie, at the recess we left off with——

The Court: Her name is not Connie. Her name is Constance Marie Bell. You will address her in that fashion.

Q. (By Mr. Sparrow): Miss Bell, at the recess—I'm sorry, Your Honor—we left off with your being out with Ege at 395 Monterey Boulevard in San Francisco. Is that correct? A. Yes.

Q. And you had a conversation at the defendant Ege's place at that time, did you?

A. Yes.

(Testimony of Constance Marie Bell.)

Q. And could you tell us in substance what that conversation was about? A. Well——

Mr. Campbell: It is understood our objection is running to all of this?

The Court: It will be so understood.

Mr. Stout: Actually I can't hear.

The Court: You will have to speak louder.

Mr. Stout: I have to guess.

The Court: You will have to speak louder, Miss Bell.

Mr. Stout: Thank you, Your Honor.

Q. (By Mr. Sparrow): Did you have a discussion about [11] prostitution? A. Yes.

Mr. Stout: Objected to as leading and suggestive.

The Court: Overruled.

A. It was about prostitution and the money and——

Q. (By Mr. Sparrow): Did he say what he wanted you to do, if anything?

Mr. Stout: Same objection, leading and suggestive.

The Court: Sustained.

A. Yes. Work as a prostitute.

Mr. Stout: Pardon me, I can't hear the witness, Your Honor.

The Court: Will you repeat that. I didn't hear it, either.

A. Work as a prostitute——

Mr. Stout: I thought the objection was sustained. I think she is answering the question to

(Testimony of Constance Marie Bell.)

which I had an objection and Your Honor sustained the objection.

The Court: All right, put another question.

Q. (By Mr. Sparrow): There was a discussion about prostitution, is that correct? A. Yes.

Q. Could you tell us in substance what that was, what you said and what he said?

A. Well, I didn't know anything about it and he told me about [12] how much you got for it and different places that you work in and how the money was split in different places and bringing home your money.

Q. Bring home your money; what did he say about that? A. Bring it home to him.

The Court: What?

Mr. Stout: I'm sorry, I can't hear.

A. Bring it home to him.

Q. (By Mr. Sparrow): Bring it home to him. Did he discuss with you the way in which the money was to be split?

Mr. Stout: Objected to as leading and suggestive.

The Court: Sustained upon that ground. Just tell us what the conversation was now, Miss Bell. You tell us what he said to you, the best you can, and what you said to him. Can you do that now fairly loudly so that everyone can hear you?

A. I told you, just about how that business was run, and how the houses would take half and you get the other half, and the different places, how

(Testimony of Constance Marie Bell.)

much they made, and the life in the racket, about nice places and nice clothes and different things.

Q. (By Mr. Sparrow): Was there anyone else there at the house at that time that you recall?

A. Well, this girl that introduced me to him was there.

Q. She was there?

The Court: By "him" you are referring to whom?

A. Eddie Ege. [13]

Q. (By Mr. Sparrow): Eddie Ege?

A. Yes.

Q. How long did you stay at the defendant Ege's house at that time?

A. About a week or so.

Q. What did you and Ege do during that week, if anything?

A. We went out different places to eat and went to a movie.

Mr. Stout: Sorry, I can't hear.

The Court: Went out to different places to eat and went to a movie.

A. And, I forget, just going out.

Q. (By Mr. Sparrow): Did he after that first night have any further discussions with you about prostitution?

A. Yes.

Q. What happened after the week about which you said you spent at Ege's house?

A. What happened after?

Q. Yes.

A. Well, there was this place in Folsom that he had opened up. I went there to work.

(Testimony of Constance Marie Bell.)

Mr. Stout: Move it be stricken as the opinion and conclusion of the witness, facts not in evidence.

The Court: Objection sustained.

Q. (By Mr. Sparrow): Where did he take you, if any place, after that week? [14]

A. I went up to Folsom and I went with this other girl, and——

Q. Where did you go? Did you go to Folsom?

A. Yes.

Mr. Stout: Objected to as leading and suggestive.

The Court: Overruled.

Q. (By Mr. Sparrow): Where did you go at Folsom?

A. To Folsom; I don't know the address, at the place, but it was down by the railroad tracks.

Q. What sort of a place was it?

A. It was a kind—kind of—I don't know—it was a big place that was meant for a rooming house, I guess.

Q. Did you have any discussion with the defendant Ege as to whose place that was?

Mr. Stout: Same objection, leading and suggestive.

The Court: Overruled.

Q. (By Mr. Sparrow): Did you?

A. Yes, I did.

Q. What did he say, if anything?

A. Well, Eddie said that he had bought this place from—I'm not quite sure if it was from this old lady that lived over on the other side, or what.

(Testimony of Constance Marie Bell.)

Q. So he told you that it was his place, is that right? A. Yes, but he couldn't be in town.

Q. What? A. He couldn't be in town. [15]

Mr. Stout: I didn't hear that.

The Court: "He couldn't be in town."

Q. (By Mr. Sparrow): What sort of activities if any went on in this place in Folsom?

A. Prostitution.

Q. It was a place of prostitution, is that right?

A. (Witness nods head.)

Q. How long did you stay there, if you did?

A. Oh, it was a week or a few days more than a week.

Q. And during that time did you engage in acts of prostitution? A. Yes.

Q. And what if anything did you do with the money which you earned, if you did earn money?

A. Eddie got it.

Q. You gave it to him?

A. (Witness nods head.) Well, I never got it. That first place, I never got any.

Mr. Stout: May I have that answer read back, and the preceding question, Your Honor?

(Question and answer read by reporter.)

Mr. Stout: Ask that the answer be stricken as non-responsive.

The Court: Motion denied.

Mr. Stout: Also objected to as the opinion and conclusion.

The Court: Overruled. [16]

(Testimony of Constance Marie Bell.)

Q. (By Mr. Sparrow): Do you remember about when this was, Connie?

A. It was probably in the latter part of September.

Q. 1953? A. Yes.

Q. What happened, you testified that you stayed at Folsom about a week or so, what happened thereafter?

A. I left. Eddie came and took me.

Q. And where did he take you?

A. Back to Monterey Boulevard.

Q. And how did he take you?

A. In his car.

Q. What sort of a car? A. A Cadillac.

Q. What did you do after returning to Monterey Boulevard?

A. Oh, I stayed there for a while, and while they hunted for a job for me.

Mr. Stout: I didn't hear that.

The Court: "Stayed there for a while, while they hunted for a job for me."

Mr. Stout: Objected to as assuming facts not in evidence.

The Court: Overruled.

Q. (By Mr. Sparrow): Did the defendant Ege arrange for a job for you?

Mr. Stout: Objected to as leading and suggestive. [17]

The Court: Overruled.

Q. (By Mr. Sparrow): Did Ege arrange for a job for you?

(Testimony of Constance Marie Bell.)

A. Well, he was going about it. He finally found one for me, yes.

The Court: I didn't hear you.

A. He got one for me.

Q. And where did he say that job was?

A. In Phoenix.

Q. Did you have any discussion with him as to how you were going to get down there?

A. Well, this other girl was going down and he said we could go down together and share the expense.

Q. Who was this other girl?

A. I knew her as Judy.

Q. Do you remember her last name?

A. Berg.

Q. Did you go down to Phoenix with Judy Berg?

A. Yes, I did.

Mr. Campbell: May I have the last question propounded by counsel read back by the reporter?

The Court: "Did you go down to Phoenix with Judy Berg?"

Mr. Campbell: Judy Berg—I had understood him to say Jean.

Mr. Sparrow: Judy. [18]

Q. Did you have any discussion with the defendant Ege regarding the expenses of the trip and about how much they would be and what if anything was to be done about sharing them?

Mr. Stout: Objected to as leading and suggestive.

The Court: Overruled.

(Testimony of Constance Marie Bell.)

A. We, I mean, were to share the expenses, and he gave me the money—we figured about \$50.

Q. (By Mr. Sparrow): And did he give you—the defendant Ege gave you \$50, is that right?

A. Uh-huh.

Q. As your share of the expenses?

A. (Witness nods affirmatively.)

Q. In whose car did you go down to Phoenix?

The Court: I didn't hear your answer to the last question.

A. Yes.

Q. (By Mr. Sparrow): In whose car did you go down to Phoenix? A. In Judy's.

Q. Judy's? A. (Witness nods head.)

Q. Who drove the car? A. Judy.

Q. And did you stop on the way or did you drive straight through? [19]

A. We stopped in several places to have coffee or something like that.

Q. But other than that you went straight through? A. Oh, we stopped in Delano once.

Q. Did you spend any time there?

A. We went to—stopped in, saw a friend of hers, and then went to the drugstore.

Q. About how long was that stop there?

A. It was about a half an hour.

Q. Then you went on, is that right?

A. Yes.

Q. Do you remember whether it was day or night at the time you arrived in Phoenix?

A. It was about—it was before noon, in the day time.

(Testimony of Constance Marie Bell.)

Q. Did the defendant Ege give you any instructions or did he give any instructions to Judy in your presence regarding what was to be done when you arrived at Phoenix?

Mr. Stout: Objected to as calling for the opinion and conclusion, and likewise leading and suggestive.

The Court: Overruled.

A. Well, she was to phone this Joe Boyd at this motel or some place and he wasn't there, and I don't know how exactly she did get in touch with him. It was through the maid, I don't know, or Eddie left a message at the motel for her to call some other number, but I don't know how it was. [20]

Mr. Stout: This is hearsay, Your Honor. It is objected to on that ground.

The Court: Overruled.

Q. (By Mr. Sparrow): And as a result of calling that other number, did you go from—first of all, where did you land, where did you go to when you first arrived in Phoenix?

A. We went to a coffee shop.

Q. A coffee shop in downtown Phoenix, was it?

A. Uh-huh.

Q. And as a result of that second telephone call, did you go anywhere from the coffee shop to any place else?

A. We went to this—the maid's house in Phoenix.

Q. And how did you get there?

Mr. Stout: Object to the characterization as

(Testimony of Constance Marie Bell.)

“maid” as the opinion and conclusion, Your Honor.

The Court: Overruled.

Q. (By Mr. Sparrow): How did you get there?

A. In Judy's car. Oh, wait, I beg your pardon. I think that—I mean, one of the people that—this colored fellow that come and picked us up, and I think—I went in his car and I think Judy drove her own car. I'm not sure.

Q. (By Mr. Sparrow): And what, if any conversation—strike that.

After arriving at this place that you described as the maid's place, what if anything happened thereafter? [21]

A. Well, we made some phone calls to let everybody know that we had gotten there all right.

Q. Who made the telephone calls?

A. Judy made one and I made one.

Q. And do you know who Judy called?

A. I don't know.

Q. As a result of that telephone call did anything happen that you know of? A. Huh?

Q. As a result of that—strike that.

How long did you stay at this place that you described as the maid's place?

A. Only just a few minutes.

Q. And then what happened?

A. Then they drove us out to Scottsdale, and I think that's the town——

Q. Who is “they”?

A. The maid and her husband, I guess.

(Testimony of Constance Marie Bell.)

Q. They drove you to Scottsdale, is that right?

A. Yes.

Q. How long did it take from Phoenix to get there, do you remember?

A. Oh, not more than half an hour, 15 minutes.

Q. Who if anyone did you see when you arrived at Scottsdale?

A. There was a girl there, but I don't know her name, and [22] there was the girl that was running the place, Ginger.

Q. Who is Ginger?

A. She was supposed to be with this Joe Boyd.

Q. Did you see the defendant Boyd at this place then, or at any time subsequent?

A. I seen him there but not—I don't know if he was there when I first got there, but he was there in the following days.

Q. Do you remember what sort of a place it was?

A. It was a regular house, I think, a home, like.

Q. Was it in the middle of town or on the outskirts of town, do you remember?

A. I think it was in the desert some place.

Q. What if anything did you do after arriving there at Scottsdale?

A. Well, I was tired and I slept the first day, and after that I started working.

Q. By that, you mean working as a prostitute there? A. Yes.

Q. Did you have occasion at any time to have any conversations with the defendant Ege?

A. Well, not——

(Testimony of Constance Marie Bell.)

Q. While you were down there at Scottsdale?

Mr. Hagerty: I will object to this as no proper foundation laid, Your Honor.

The Court: Overruled. [23]

A. I got a message that he was going to call at this phone booth.

Q. (By Mr. Sparrow): Where was the phone booth? A. It was in a gas station.

Mr. Stout: Just a moment. That is objected to as no proper foundation.

The Court: Overruled.

Q. (By Mr. Sparrow): Do you remember where, what sort of a gas station it was?

A. I can't—I couldn't say for positive. It might have been a Shell. I'm not sure.

Q. Was that right near the house?

A. It wasn't too far from it, I don't think.

Q. I believe you said you had a conversation—you got word that Ege was going to call you. Did he call you? A. Yes.

Q. And did you have a conversation with him over the telephone? A. Yes.

Q. What was that, would you tell us the substance of that conversation?

Mr. Stout: Just a moment. No foundation laid, objected to on that ground.

The Court: Overruled.

Mr. Hagerty: And, Your Honor, it is understood that our [24] objection as to the hearsay is to continue?

The Court: So understood.

(Testimony of Constance Marie Bell.)

A. It was that business had been bad. I mean, he asked me how the business had been, and I said bad, and he said Delano was opening, and so I went to Delano.

Q. (By Mr. Sparrow): Who suggested going to Delano? A. Eddie.

Mr. Stout: Objected to as leading and suggestive.

The Court: Overruled.

Mr. Sparrow: By Eddie you mean the defendant Ege?

A. Yes.

Q. (By Mr. Sparrow): Did you have any conversation with him as to how you were going to get there?

A. Well, I was to fly because they were short on girls there and they had no girls.

Q. Did you earn any money while you were there at Scottsdale? A. Well, yes, I did.

Q. How much, do you remember?

A. Oh, a couple of hundred dollars, I guess. I'm not sure.

Q. Is that what you netted yourself?

A. Uh-huh. Oh, no. Oh, yes, what I made. I mean, after it was cut down.

Q. After it was—how was it cut down?

A. Well, 50 per cent went to the house and 50 per cent went to me. [25]

Q. So you got about \$200, is that right?

A. Uh-huh.

Q. Did you have to pay anything other than the 50 per cent for board and room at the place?

(Testimony of Constance Marie Bell.)

A. 10 per cent room and board we paid out of what you made after it was cut.

Q. Did you have any discussion in this telephone discussion with the defendant Ege as to how you would pay for this airplane ticket?

A. Out of the money that I made.

Mr. Stout: I'm sorry, I didn't hear the answer.

The Court: "Out of the money that I made."

Q. (By Mr. Sparrow): Did the defendant Ege give you any instructions over the telephone as to who you were to contact in Delano?

A. Well, when I got to Los Angeles I was to call in to Delano in to this number that he gave me and I was to let him know what time my flight would arrive in Bakersfield.

Q. Who was the person you were to call? Did Eddie Ege tell you who that was?

A. Joe Bruno.

Q. And when you arrived in Los Angeles did you in fact call that number? A. Yes, I did.

Q. And when you arrived in Bakersfield was anyone waiting [26] there to pick you up?

A. Yes, there was.

Q. And who was that? A. Joe Bruno.

Q. What was he driving?

A. He was driving a Cadillac.

Q. And where did he take you, if anywhere, from the airport?

A. He took me to Delano and the house—his house there.

(Testimony of Constance Marie Bell.)

Q. He took you to Delano. Did you have any conversation with him as to whose house that was?

A. Well, he told me it was his and his old lady's.

Q. He said it was his and his old lady's?

A. Yes.

The Court: Whom did he mean by his old lady, do you know that?

A. A girl named Kitty.

The Court: He didn't mean his mother, did he?

A. No, he meant this girl.

Q. (By Mr. Sparrow): This girl you knew as what? A. Kitty.

Q. Kitty? A. Uh-huh.

Q. Did you meet Kitty at the place in Delano?

A. No, she wasn't there. She was sick.

Q. And did you work in this place in Delano? [27] A. Yes, I did.

Q. And for about how long?

A. For a couple of weeks, for about three weeks, I'll say.

Q. Did you earn any money there?

A. Yes, I did.

Q. Do you remember about how much you earned?

A. Well, quite a bit, about seven or eight hundred dollars.

Q. That was your share, is that right?

A. Uh-huh.

Q. While you were there did you observe the defendant Bruno about the house on frequent occasions? A. I beg your pardon?

(Testimony of Constance Marie Bell.)

Q. While you were there at the house in Delano did you observe the defendant Bruno about the house? A. Oh, yes, he was there.

Q. Would you say he was there many times?

A. He was there almost every night except a couple of times.

Q. And what if anything did you observe him do there at the house?

A. He would sit in the kitchen all night until it was time to check out.

Q. Then what would he do, if anything?

A. He would help count the money and check us out.

Q. Where did you go after the two or three weeks you said you spent there in Delano? [28]

A. I went to Fresno.

Q. And did you thereafter see the defendant Ege?

A. In Fresno, he came and picked me up.

Q. He came and picked you up in what, an automobile? A. Yes.

Q. And then where did you go?

A. I came back to San Francisco.

Q. And where did you go in San Francisco?

A. To Monterey Boulevard.

Q. And how long did you stay there?

A. Oh, a few weeks, I think.

Q. And where did you go after that?

A. I went to Barstow.

Q. Did you make any trips while you were stay-

(Testimony of Constance Marie Bell.)

ing in Monterey Boulevard to places other than Barstow before you went there?

A. Oh, I went to Sacramento and I went to Isleton.

Q. You went to Isleton. Whereabouts did you go to in Isleton?

A. I can't remember the exact place, but it was——

Q. Was it a house of prostitution?

A. Yes, they were, both of them.

Q. And how long did you stay there?

A. Not very long, just a few days.

Q. Oh, by the way, you testified you had about seven or eight hundred dollars, I believe, as a result of the stay in [29] Delano. What if anything did you do with that money?

A. Well, when Eddie came, he got it from me in Fresno.

Q. He took it from you in Fresno?

A. Uh-huh.

Q. Did you earn some money in Isleton?

A. Yes.

Q. What if anything did you do with that?

A. I guess I gave it to him.

Mr. Stout: Objected to as conjecture.

The Court: Sustained.

Q. Did you or did you not give it to him, what is your best recollection?

A. I can't—I think I did, but I'm not sure.

Q. You're not sure. All right.

Q. (By Mr. Sparrow): Did you at or about

(Testimony of Constance Marie Bell.)

that time have any discussion with Eddie regarding the matter of turning over to him the money which you earned in houses?

A. It was definitely understood from the beginning that I was.

Mr. Stout: Objected to as the opinion and conclusion.

The Court: Sustained.

Q. (By Mr. Sparrow): Did you have any discussion with him about it?

A. He told me that everybody gave their money to the man that had them. [30]

Mr. Stout: Ask that the answer be stricken.

The Court: Objection overruled. Motion denied. What did he tell you?

A. That you, just all the girls, gave their money to the man that they were with.

Q. (By Mr. Sparrow): Did you at or about that time have occasion to get into any dispute with Eddie Ege over the division of the money, the turning of it over?

A. Oh, several times I got into quarrels with him about it.

Mr. Campbell: I wish to again for the record——

The Court: Would you mind standing up, Mr. Campbell, when you address the Court?

Mr. Campbell: Yes, sir. I wish again for the record to have it understood that my objection again goes to all of this testimony.

(Testimony of Constance Marie Bell.)

The Court: I think we have a complete understanding about that. The record discloses it.

Mr. Campbell: The reason I renew that, Your Honor, is because there had intervened some testimony regarding the defendant Bruno.

The Court: All right, proceed.

Q. (By Mr. Sparrow): What were these quarrels about, Miss Bell?

A. Oh, different things, about money and spending too much, and I wanted to go away, I wanted to be on my own. It just [31] wasn't done, he told me.

Q. What if anything did he say to that, what did he say when you said you wanted to go on your own? Did he say anything else besides "that wasn't done"? A. Oh, he threatened me.

Q. He threatened you with what?

A. He pushed me around, and one time he got awful mad at me and had me—chased me with a knife.

Q. Did you ever have occasion in your discussions with the defendant Ege—did he ever discuss with you what if any action you were to take in the event you were arrested while working in a house?

A. That I wasn't to say nothing.

Q. After you worked at Isleton did you then come back to Monterey Boulevard?

A. Yes, I did.

Q. And thereafter where did you go?

A. Barstow, I'm pretty sure.

Q. You went to Barstow? A. Uh-huh.

(Testimony of Constance Marie Bell.)

Q. How did you get to Barstow?

A. Oh, I went up with some people in a car, but I can't remember who they were.

Q. Do you remember where you left from?

A. From the Sarong Club. [32]

Q. And how did you happen to go to the Sarong Club to pick up this car?

A. Well, these people came out to Monterey Boulevard and got me and brought me down to the Sarong Club where there was some other girls they were meeting.

Mr. Stout: Just a moment, that's hearsay and opinion and conclusion.

The Court: Would you repeat that answer, please?

(Question and answer read by reporter.)

The Court: Overruled.

Q. (By Mr. Sparrow): How did these people happen to pick you up at Monterey Boulevard?

Mr. Stout: Same objection.

The Court: Overruled. Where do you think you are, in some Justice of the Peace Court?

Mr. Stout: Your Honor, I have a right to make my objection.

The Court: But don't be making frivolous objections. Take your seat.

Proceed.

Mr. Stout: I am not making frivolous objections.

The Court: Proceed, Mr. Sparrow.

The Witness: Would you repeat the question?

(Testimony of Constance Marie Bell.)

Q. (By Mr. Sparrow): Do you want the reporter to read the question? [33]

A. Yes, please.

(Pending question read by reporter.)

A. Well, Eddie had got the connection some way. I don't know how.

Mr. Stout: Objected to as hearsay, Your Honor; it is speculation.

The Court: Overruled.

A. And I was home and he came home and told me about this job up in Barstow and for me to get ready and go.

Q. (By Mr. Sparrow): Ege told you that?

A. Yes.

Q. So you sent to Barstow, did you?

A. Yes, I did.

Q. And do you remember where you went there?

A. Well, it wasn't exactly in the town of Barstow. It was a little bit out of Barstow, but I worked from there.

Q. Was it a place called Newberry?

A. Yes, Newberry, that was it.

Q. And do you remember the name of the place?

A. No. It was a little kind of a—like a motel or something, oh, that—it hadn't been used for a long time as a motel. On the highway some place.

Q. How long did you stay there?

A. It wasn't too long. A couple of weeks.

Q. What if anything happened after that? [34]

A. The place got raided.

Q. What did you do after that?

(Testimony of Constance Marie Bell.)

A. I went to jail.

Q. Beg your pardon?

The Court: Where?

A. To jail.

Q. (By Mr. Sparrow): What if anything did you do there?

A. Well, we got out on bail and I called home to Monterey Boulevard there and I was told that Eddie wasn't there and——

Mr. Stout: Objected to as hearsay, not binding.

The Court: The objection is sustained.

A. And that——

Q. (By Mr. Sparrow): Just a minute, Miss Bell.

You made a telephone call to Monterey Boulevard. Did you get Eddie on the telephone call there?

A. No, he wasn't there.

Q. As a result of that telephone conversation did you have occasion to call him any place else?

A. Yes.

Q. And where was that?

A. In Las Vegas at Roxy's.

Q. So you called——

A. I mean, not direct to him but to a girl that was there that could get ahold of him.

Mr. Stout: Objected to as hearsay, not binding. [35]

The Court: Overruled.

Q. (By Mr. Sparrow): And as a result of that call which you made to Roxy's in Las Vegas, did you thereafter have a telephone conversation with Ege?

A. Yes.

(Testimony of Constance Marie Bell.)

The Court: In other words, the purpose of your call to Las Vegas was in order to get in touch with Ege, is that right?

A. Yes.

The Court: Someone there told you where to get in touch with him?

A. Oh, no, they told me to call back at that place, and then I called back again and they told me to wait up at Barstow there and that he would come and get me.

Mr. Stout: Your Honor, it is not binding, it is objected to as hearsay.

The Court: Overruled.

Q. (By Mr. Sparrow): As a result of that telephone conversation did Ege come to Barstow and pick you up?

A. Yes.

Q. And what if anything was he driving?

A. His Cadillac.

Q. And where did he take you from Barstow?

A. We went to Las Vegas.

Q. Whereabouts in Las Vegas? [36]

A. Well, we went to, oh, different places, but I can't remember exactly where. I worked there at Roxy's a day.

Mr. Stout: Objected to as not responsive.

The Court: Overruled.

Q. (By Mr. Sparrow): You worked at Roxy's?

A. Uh-uh.

Q. Did you have any discussion with the defendant Ege before you went to work at Roxy's?

A. Pardon?

(Testimony of Constance Marie Bell.)

Q. Did you have any discussion with Ege before you went to work at Roxy's?

A. Well, he told me to go there.

Q. How long did you stay at Roxy's?

A. Just a few days.

Q. And then what happened?

A. That I got, oh, got in a quarrel, and I left.

Q. And you got in a quarrel with whom?

A. Eddie.

Q. And then you left. Where did you go?

A. I came back to San Francisco.

Q. And how did you come back?

A. On a bus.

Q. Where did you get the money to pay the bus fare?

A. Oh, from working there at Roxy's that day.

Q. Where did you go when you came to San Francisco? [37]

A. I went to—I checked in at this hotel here in town. There was a girl there that I knew.

Q. Did you stay with her? A. Yes.

Q. About how long was that?

A. Oh, just a few days.

Q. Then where did you go?

A. I went to Suisun.

Q. Suisun. And what did you do there?

Mr. Stout: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Nothing—I mean, I worked there, but I came back to town in a few days.

(Testimony of Constance Marie Bell.)

Q. (By Mr. Sparrow): Did you work as a prostitute there in Suisun? A. Uh-huh.

Q. And thereafter you came back to town. What if anything did you do next?

A. Well, I worked in this apartment and it got raided.

Q. Where was the apartment?

A. It was on Atuma Street.

Q. Here in San Francisco?

Mr. Stout: Where?

The Court: On Atuma Street in San Francisco. She worked [38] in an apartment on Atuma Street in San Francisco.

Mr. Campbell: If the Court please, I wonder if we are getting beyond the period in the indictment.

The Court: Fix the time, Mr. Sparrow.

Q. (By Mr. Sparrow): About when was that Connie, do you remember—I mean, Miss Bell—I'm sorry. A. In January, the first of February.

Q. What year, do you remember?

A. Of 1953.

Q. 1953? A. I mean 1954.

Q. 1954.

Mr. Campbell: Pardon me, Mr. Sparrow. Excuse me. The last act referred to in the indictment—it is not alleged to be a continuing conspiracy—is 14, which refers to December, 1953, when Ege is alleged to have driven this witness from Barstow to Las Vegas.

(Testimony of Constance Marie Bell.)

The Court: You're right. Don't go beyond that, Mr. Sparrow.

Q. (By Mr. Sparrow): Miss Bell, about what time was it that you left Roxy's in Las Vegas after that quarrel with Ege?

Mr. Campbell: Same objection, it is obviously beyond the point, the last point.

The Court: That question relates, Mr. Campbell, directly to the last count of the indictment. In other words, he is [39] simply asking her when she left Barstow to go to Las Vegas.

Mr. Campbell: I have no objection to this particular question if it is not going into the same matter.

A. That was around Christmas or so.

Q. (By Mr. Sparrow): Of 1953?

A. 1953.

Q. Have you had occasion since about Christmas, 1953, to see the defendant Ege or the defendant Boyd or the defendant Bruno?

A. I saw Ege.

Q. Where did you see him?

Mr. Stout: Objected to as incompetent, irrelevant and immaterial.

Mr. Campbell: Objected to, on behalf of the defendant Bruno, as occurring subsequent to the time of the alleged conspiracy and therefore in no way binding as to him.

The Court: Overruled.

Q. (By Mr. Sparrow): Where did you see the defendant Ege?

(Testimony of Constance Marie Bell.)

A. Oh, I saw him in different places, like the Sarong Club and just different places.

Q. Did you thereafter have any financial dealings with the defendant Ege after Christmas?

Mr. Stout: Objected to as incompetent, irrelevant and immaterial, after the scope of this——

The Court: Do you know how to stand up?

Mr. Stout: Yes, Your Honor, I do—— [40]

The Court: Overruled.

Mr. Stout: ——but I have to pose these objections rather fast because——

The Court: The objection is overruled.

A. There was talk about—I mean, I had broken up and I don't think there was—I know that he—there had been talk that—there had been talk——

The Court: What?

A. Nothing.

Q. (By Mr. Sparrow): You broke off with him insofar as any financial transactions with him were concerned after about Christmas, 1953, is that right?

A. Yes.

Q. Turning for the moment, Miss Bell, to the trip which you took with Judy from Monterey Boulevard to Phoenix. Did the defendant Ege give you any instructions as to contacting Ege after you arrived at Phoenix?

Mr. Stout: It is leading and suggestive, objected to on that ground.

The Court: Overruled.

A. Yes. I was to call——

Q. (By Mr. Sparrow): Did you call from Phoenix to San Francisco?

(Testimony of Constance Marie Bell.)

A. Yes. Yes, I did.

Q. And did you speak on that occasion with the defendant Ege? [41]

A. Well, one time I couldn't get him and then the next time, I think I spoke to—I did speak to him one time, I know.

Q. What did you tell him?

A. That I had gotten there.

Q. Was that in accordance with instructions which Eddie Ege had given you?

A. That's what I was to do.

Mr. Hagerty: I didn't hear the last answer.

The Court: "That is what I was to do."

Mr. Sparrow: No further questions.

The Court: Cross-examine.

Cross-Examination

By Mr. Stout:

Q. Are you in custody at the present time?

A. No, I am not.

Q. Where are you living at the present time?

A. In San Francisco.

Mr. Sparrow: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. (By Mr. Stout): Pardon?

A. In San Francisco.

Q. Where in San Francisco?

Mr. Sparrow: If Your Honor please, I will object to that as incompetent, irrelevant and immaterial.

(Testimony of Constance Marie Bell.)

The Court: Overruled. I can't see any objection. [42] I can't see any objection in this young lady telling us where she lives unless there is some obscure reason that would on the part of the Government prevent it.

Mr. Sparrow: If Your Honor please——

The Court: Of which I know nothing.

Mr. Sparrow: The witness is apprehensive of possible retaliation against her.

Mr. Stout: Just a moment.

Mr. Sparrow: And she is reluctant.

Mr. Stout: I object to any statement of that nature.

The Court: You wanted to know. But this Court will amply protect her. I will see that she has all the protection that is necessary.

Mr. Stout: Well, will Your Honor instruct the jury that they are not to make any conclusion from the remarks of Mr. Sparrow about retaliation?

The Court: I will do that at the proper time.

Q. (By Mr. Stout): The question was, where are you living in San Francisco?

A. 547 Dolores Street.

Q. 547 Dolores? A. Yes.

Q. Where is that? A. San Francisco.

Q. With whom do you live at 547 Dolores? [43]

A. I live by myself.

(Testimony of Constance Marie Bell.)

(The witness exhibited emotional distress.)

Mr. Stout: Should I desist questioning for the moment, Your Honor?

The Court: No. Are you all right?

The Witness: Yes, I'm fine.

The Court: Get her a glass of water, Mr. Crier.

Q. (By Mr. Stout): Are you married or single? A. I'm married.

Q. What is your husband's name?

Mr. Sparrow: If Your Honor please, in justice to the feelings of innocent people who aren't involved here, I would like it possible to have counsel stipulate that her married name should not enter into these proceedings.

The Court: You don't have to answer that question.

Q. (By Mr. Stout): As I understood it, at some time in September of 1953 you met the defendant Edward Ege at the Sarong Club, is that correct? A. Yes, it is.

Q. And that's here in San Francisco on Geary Street, is that likewise not true? A. Yes, it is.

Q. Who introduced you to him, may I inquire?

A. A girl named Rosalind.

Q. Rosalind? Where had you known Rosalind? [44] A. From the Burlesque Follies.

Q. Are you talking about the President Follies on O'Farrell Street here in San Francisco—yes, on O'Farrell Street—no, it's on McAllister Street. Is that the place?

(Testimony of Constance Marie Bell.)

A. It is the President Follies, yes.

Q. Was she working in the Follies with you?

A. Yes, she was.

Q. What type of work were you doing, dancing?

A. Dancing in the chorus line.

Q. Chorus work? A. Yes.

Q. Prior to that time had you ever seen Edward Ege?

A. I beg your pardon?

Q. Prior to the meeting at the Sarong Club had you ever seen Edward Ege?

A. No, I hadn't.

Q. Did Rosalind accompany you to 395 Monterey Boulevard on the occasion of your first visit to that establishment?

A. Yes, she did.

Q. Do you know Rosalind's last name?

A. No, I don't.

Q. Have you seen Rosalind in recent years?

A. Oh, I have seen her, but I don't—I haven't seen her in quite a long time.

Q. Have you ever worked at any other theater, burlesque [45] theater, other than the President?

A. No, I haven't.

Q. You have not? A. No.

Q. You never worked at the theater in Oakland called the El Rey?

A. No, I haven't.

Q. Did Rosalind stay at 395 Monterey Boulevard here in San Francisco during the time that preceded your going to Folsom?

A. She stayed there one night.

Q. Did you see her again after that?

A. Yes, I did.

Q. At 395 Monterey Boulevard?

(Testimony of Constance Marie Bell.)

A. Well, she came to pick me up there at one time.

Q. This was in the first week?

A. Well, no, it was a different time.

Q. Later? A. Yes.

Q. Who else was at 395 Monterey during the occasion of your first week's visit there?

A. There was an old man there.

Q. His name, if you know?

A. I don't remember it.

Q. What did you call him? [46]

A. I can't remember him very well. He wasn't there very long.

Q. You were there a week, as I understand it. Was he introduced to you?

A. I can't remember the man's name.

Q. Did you converse with him at any time?

A. I did say something to him but he was an alcoholic or something and he didn't make much sense to me.

Q. Was anybody else present in that first week's visit? A. Judy came in.

Q. By Judy, who do you mean, Judy Berg?

A. Yes, I do.

Q. When did she arrive?

A. She arrived, I think, the day after I was there. I had been there one night.

Q. Is that the only person who was there other than the old man that you have described, yourself and the defendant Ege? A. Well——

Q. Or were there other people?

(Testimony of Constance Marie Bell.)

A. There may have been other people—I mean come in through different times, but never stayed any length of time.

Q. When was the first conversation that you had with the defendant Ege with respect to prostitution?

A. The first day that I went there.

Q. That was in the evening?

A. It was about evening, I would say. [47]

Q. You went to the Sarong Club in the afternoon or the early evening?

A. Well, it was in the latter part of the afternoon, almost evening.

Q. Was anyone else present at the time of your initial conversation with Mr. Ege about prostitution?

A. Rosalind was there.

Q. Rosalind was there. Did she participate in the conversation?

A. No, she didn't.

Q. Now you have testified in substance the first conversation with Mr. Ege about prostitution related to money. Tell me what he said with respect to money, please.

A. He said that the prostitution—there was money in it to be made, and the different prices of the different places and about sharing, splitting with the houses, and the good things that—I mean, the money, the amounts of money you could make. I can't remember all we talked about.

Q. What did he tell you about himself in this first conversation, anything?

A. What do you mean by "himself"?

(Testimony of Constance Marie Bell.)

Q. Who he was, what he did, where he came from, what he had done prior to this.

A. He didn't say.

Q. He didn't tell you anything about himself? [48]

A. Except that I was in his house and that he was, well, a pimp.

Q. What did he say to you in—

The Court: Let's get that last answer, Mr. Stout. You anticipated a little bit.

Mr. Stout: I'm sorry, maybe I didn't hear the last part of it.

The Court: What did you say, if anything, about him being a pimp?

A. I said it was his house and that he was a—owned it but—not owned it, but had it, and he was a pimp, I guess.

Q. (By Mr. Stout): Did he use the word "pimp" in your presence in that first conversation at 395 Monterey; did he describe himself as such?

A. Well, not to exact words. I don't think nobody would describe himself that way.

Q. He did not describe himself that way?

A. Well, he told me that he—he was the interceptor of all of these girls, their money. Isn't that a pimp?

Q. Did he tell you what girls he had and what girls he was intercepting? A. Yes.

Q. Who? A. He had three or four girls.

Q. Did he name you names? [49]

A. Yes.

(Testimony of Constance Marie Bell.)

Q. Name me, please? A. What?

Q. What names did he name for you?

A. Ginger was one girl that I knew.

Q. Did he name her, Ginger, in this first conversation?

A. Well, I can't tell you what he named in the first conversation but I did meet these girls afterward and they were his girls. So evidently they had to be one and the same. One girl was married to him.

Q. Which girl was that?

A. I guess Ginger.

Q. Did she tell you or did he tell you she was married to him, did he tell you he was married to Ginger? A. She told me.

Mr. Stout: I will ask the answer be stricken as hearsay, Your Honor, also calls for her opinion and conclusion.

The Court: All right, it may go out. The jury is instructed to disregard it.

Q. (By Mr. Stout): Can you tell me other girls whose names are involved in this that he told you about on this first conversation?

A. Connie.

Q. Pardon me? A. Connie. [50]

Q. Connie? A. (Witness nods head.)

Q. That was not yourself?

A. No, it's a different girl.

Q. By the way, what name were you introduced to him under, the name Constance Marie Bell?

A. No.

Q. Under what name? A. Cindy.

(Testimony of Constance Marie Bell.)

Q. How long had you been known as Cindy?

A. Not very long. I had just changed it myself.

Q. Was that a name you used when you went to the President Follies? A. Yes.

Q. Was your last name that you used Marlow?

A. Yes.

Q. That last name was likewise not your own name but had been taken by you, is that correct?

A. Yes.

Q. What conversation did you have with Mr. Ege at the Sarong Club prior to going out to 395 Monterey Boulevard? A. Just——

Q. General? A. General talk, talking.

Q. Didn't you talk about prostitution? [51]

A. Well, he wanted to know why I wanted to see him. I mean, why that girl brought me down there to see him.

Q. What did you say in that regard?

A. Huh?

Q. What did you say in response to Mr. Ege's question?

A. That I was a friend of this Rosalind and that I had come along with her to see him.

Q. Mr. Ege asked you why you had come. You said you were a friend of Rosalind's, that you had come along to see him, is that right?

A. Look, I can't remember exactly two years what a conversation consisted of. I can say what I think but I can't say it's the God's honest truth. I can't remember that far back. Can you?

Q. The first conversation that you had with Mr.

(Testimony of Constance Marie Bell.)

Ege was there that evening at his house at 395 Monterey? A. That was the first.

Q. The first conversation?

A. Conversation about prostitution.

Q. Now tell me this, in all, during your first week there, how many specific conversations were there with Mr. Ege with reference to prostitution, if you can?

A. I'll tell you, you never stop talking about it, it's constantly mentioned when you're in the racket you're in.

Q. This conversation with Mr. Ege was continuous, then? [52]

A. When you live with those people and see them day in and day out, what do you talk about?

Q. I wouldn't know. I have never been a party to it. A. Well, that's what you talk about.

The Court: Take a recess for a few minutes, ladies and gentlemen.

(Short recess taken.) [52A]

Q. (By Mr. Stout): Did you go with Rosalind to the Sarong Club for the purpose of meeting Edward Ege in the attempt to place yourself in prostitution? A. No.

Q. For what purpose did you go to meet Edward Ege?

A. Rosalind knew him and I went with her to meet him.

Q. That was all, friendly, social visit, is that right?

(Testimony of Constance Marie Bell.)

(Witness nods head.)

Q. Will you answer the question, please?

A. I said "Yes."

Q. Why did you go into prostitution?

Mr. Sparrow: Objected to as irrelevant, incompetent and immaterial.

The Court: Overruled.

A. Because I wanted the money.

Q. (By Mr. Stout): While you were stationed at 395 Monterey Boulevard did you make any money that first week? A. No, I didn't.

Q. You just lived there, went out with Mr. Ege, is that correct? A. Yes.

Q. During that period of the first week did Mr. Boyd come to 395 Monterey Boulevard?

A. No, he didn't.

The Court: I didn't hear you. [53]

A. No, he didn't.

Q. (By Mr. Stout): Did Mr. Bruno?

A. No, he didn't.

Q. Of your own knowledge do you know whether there were any telephone conversations received during that week from either of those two gentlemen whose names I have just given you?

A. Not to my knowledge.

Q. Not to your knowledge. Did Judy Berg remain at the house during the entire time you were there? I am referring to 395 Monterey, on the occasion of your first one week's visit?

(Testimony of Constance Marie Bell.)

A. Well, she stayed a few days but she went home a couple of times.

Q. You went with her from San Francisco to Phoenix, is that right? A. Yes.

Q. In her car? A. Yes.

Q. What kind of a car was it?

A. It was an Oldsmobile.

Q. Can you tell me—and I know this is asking possibly a little too much from you—what the day of the week it was that you left San Francisco? Now, if you don't recall, just say so.

A. Well, no, I don't.

Q. All right. Can you tell me what time of the day or night [54] it was, can you help me with that? A. It was in the morning.

Q. Eight o'clock in the morning, nine o'clock, somewhere along in there, early morning, an early morning start, in other words? A. Yes.

Q. Just the two of you, that is, Judy and yourself, were going to go, is that right? A. Yes.

Q. When was it that Phoenix was first mentioned to you by Mr. Ege in the several discussions you had with him?

A. Well, it was mentioned after I came out of Folsom, about a week later or a couple of weeks later, a week or so, at the Sarong Club.

Q. In other words, as I take it, Phoenix was never mentioned in the first week's visit?

A. No.

Q. Is that right? A. No, it wasn't.

Q. You went up to Folsom, is that correct, after

(Testimony of Constance Marie Bell.)

the first week? A. Yes.

Q. How did you go to Folsom, in a car?

A. Yes.

Q. Whose car? [55] A. Judy's.

Q. Judy's car. That same Oldsmobile that you went to Phoenix in? A. I'm pretty sure, yes.

Q. Who else was in Folsom with you and Judy in this rooming house? A. Ginger was there.

Q. Ginger? A. (Witness nods head.)

Q. Who else? A. I think that's all.

Q. As I understand it and from what I have gathered from your testimony earlier this afternoon, at the end of each evening there was the matter of accounting for the money that you took in, is that correct? A. Yes.

Q. All right. Now while you were in Folsom with whom did you account for your earnings?

A. I didn't account to no one for them because I didn't get any.

Q. Let me see if I understand you. Am I right that from that answer that you did not practice prostitution in Folsom?

A. Oh, yes, I did. Oh, I did.

Q. Did you get any money then for it?

A. No, because the house belonged to Eddie. [56]

Q. Well, now, wait a minute, that isn't what I am asking you. A. I worked for Eddie.

Q. Did you get any money for it?

A. No. Well, I made money but it wasn't given to me.

Q. You made money. All right. Now, how was the

(Testimony of Constance Marie Bell.)

money picked up, shall we say, so that you didn't get any portion of it?

A. Well, Judy went to work for him and she got her's at the end of the evening, and I didn't get none.

Q. Who was the money given to?

A. The girl that was—the madame there.

Q. Ginger?

A. No, it wasn't Ginger. Some other girl. Bobby, I think was her name.

Q. After each act of prostitution would you give the money to Bobby or before each act, which?

A. Before.

Q. Before each act. And you saw none of that money then at the end of each evening, is that correct?

A. That's correct.

Q. At Folsom while you were there did you see Eddie Ege?

A. Yes.

Q. Where? A. In the house.

Q. With whom? [57]

A. With himself. I mean——

Q. Did you talk to him? A. Yes.

Q. About what?

A. About how I was making out.

Q. What did you say in that regard?

A. I was scared. I didn't know what I was doing.

Q. Did you tell him that you were scared?

A. Well, I didn't know how—it was the first time I had been in a place and I told him——

Q. Excuse me, did you tell him you were scared?

A. Yes. I didn't know what I was doing.

Q. You told him that? A. Yes.

(Testimony of Constance Marie Bell.)

Q. Is that right? A. Yes.

Q. What did he say?

A. He told me that I would get used to it. I mean, everybody is scared the first week.

Q. Was he there continuously during that week you were there at Folsom?

A. No, he wasn't. I mean, he was there——

Q. How many times—excuse me—I didn't get your answer.

A. He was there off and on.

Q. How many times off and on? [58]

A. Oh, maybe every other day he would come in from Sacramento or some place like that.

Q. Did you know where he had been in the meantime?

A. He said he had been in Sacramento.

Q. I see. Do you know that is Mr. Ege's home town, Sacramento? Did he tell you that?

A. No.

Q. He never mentioned that Sacramento was his home town?

A. Well, I knew that he had been—he had lived in Sacramento but I didn't know it was his home town.

Q. He never told you? A. No.

Q. How long would you say he stayed in Folsom in these every other day trips?

A. Just maybe an hour or so.

Q. Would you converse with him during the period of time? A. Yes, I would.

(Testimony of Constance Marie Bell.)

Q. Who else would be present, who else?

A. Well, sometimes the madam would be there.
Sometimes.

Q. Who?

A. Sometimes by myself. The madam.

Q. Meaning? A. Bobby.

Q. I see. Sometimes yourself?

A. Yes. [59]

Q. Did you ever ask him on those occasions where the money was going that you earned?

A. I knew.

Q. I asked you if you asked him?

A. No, I didn't.

Q. You did not. You were in Folsom a week?

A. A week or maybe a little more, a couple of days more.

Q. Then you came back to San Francisco, is that right? A. Yes.

Q. How did you come back to San Francisco? By that, I mean, what means of transportation?

A. Eddie took me back.

Q. Did Judy accompany you back?

A. No, she didn't.

Q. What did Judy do?

A. She stayed there.

Q. Did you see Judy again in San Francisco after you returned from Folsom?

A. When she came down from Folsom, yes.

Q. How many days later?

A. A couple of days or so.

(Testimony of Constance Marie Bell.)

Q. In what month do you place these occurrences?

A. Around September and October. About September.

Q. Did anything of an unusual nature occur during that period of time that would cause you to place it in either of those [60] two months?

A. No, not particularly.

Q. Can you fix it by the date that you last worked at the President Follies?

A. No, I forget the date of my employment there.

Q. You don't recall that date?

A. Sometime in September. I mean, even the beginning of September and the last of October.

Q. When did you first go to work at the President Follies?

A. Like I said, it was either the first of September or the end of August. I'm not sure.

Q. And your work prior to that had been with the Wall Street Journal?

A. I mean, I had worked at the Wall Street Journal, but I had worked other places.

Q. Well, tell me then what was your job immediately preceding going to work at the Follies?

A. I worked at Hastings department store, the last place.

Q. Can you fix the month in which worked at Hastings?

A. It was before June.

Q. Of 1953?

A. Yes.

Q. And you were there how long?

(Testimony of Constance Marie Bell.)

A. Not too awfully long.

Q. A couple of weeks maybe? [61]

A. Maybe. Maybe a month or so.

Q. Is there something about the month of September that causes you to remember that is the month in which you first met Eddie Ege or first stopped working at the President Follies, is that merely your best recollection?

A. It is my best recollection.

Q. Has anybody attempted to assist you in refreshing your recollection? A. No.

Q. Mr. Sparrow has conferred with you about dates on many occasions, has he not? A. Yes.

Q. Didn't he attempt to refresh your recollection with reference to these days?

A. Well, yes.

Q. You also talked with members of the F.B.I. on many occasions?

A. Yes. But that's not the question you asked me in the beginning.

Q. I am asking you now. Did any of them attempt to refresh your recollection as to these specific dates here involved? A. Yes.

Q. And even with that assistance you were not able to refresh your recollection, is that right?

A. Just—— [62]

Mr. Sparrow: Objected to as argumentative, if your Honor please.

The Court: Overruled.

A. Just to the month?

Q. (By Mr. Stout): Pardon?

(Testimony of Constance Marie Bell.)

A. Just to the month.

Q. Just to the month. The portion of the year, the year, that is the best you can do, is that right?

A. Yes.

Q. Pardon? A. Yes.

Q. Can you place the month in which you went to Phoenix?

A. The first of October or so, September.

Q. Is that merely the process of counting the days you were in San Francisco on your first visit to the time you were in Folsom on your visit there and your period back in San Francisco, on your return from Folsom; is that how you compute the first of October?

A. Well, I can't say. I mean, the only reason I can say October is because——

Q. I am trying to ascertain your mental processes and I am trying to do it the only way I know how. If I ask questions like this, you will please excuse me. A. Yes.

Q. So can you now tell me how you arrived at the month of [63] October?

Mr. Sparrow: Asked and answered as her best recollection.

The Court: Let her answer it again.

A. That is to the best of my recollection.

Q. (By Mr. Stout): Before you went to Phoenix you were at 395 Monterey Boulevard in San Francisco, right? A. Yes.

Q. Upon your return from Folsom, who likewise was living at that establishment, the same old

(Testimony of Constance Marie Bell.)

alcoholic gentleman whose name you don't recall?

A. I don't think he was there.

Q. Your best recollection is that he was not there?

A. (Witness shakes head in negative.)

Q. Was Judy after her return from Folsom?

A. She came by but she didn't live there.

Q. Who else lived there?

A. Well, there was some other girls that lived there but they weren't there. I was about the only one there.

Q. Excuse me. Some other girls who lived there but they weren't there. What do you mean?

A. Well, they lived there, their clothes were there but they were gone.

Q. They were not present physically?

A. No, they weren't there physically.

Q. Who was there then besides yourself and Ege? [64]

A. Nobody.

Q. Nobody? A. I don't think.

Q. How long did you stay at 395 Monterey Boulevard after you returned from Folsom? Days?

A. About a—it took them about a week or so to find me work.

Q. "Took them"?

A. I mean him. Excuse me.

Q. You mean Mr. Ege? A. Yes.

Q. Were you present during the time that he made telephone conversations?

A. Well, he made several telephone conversa-

(Testimony of Constance Marie Bell.)

tions to different people about getting me a job, but there was nothing in town.

Q. Can you tell me to whom he made telephone conversations? A. No, I can't. [65]

Q. Did he tell you where he was calling?

A. Oh, he called different places.

Q. Did he tell you where he was calling?

A. No.

Q. Delano possibly?

A. He could have called Delano.

Q. Could he have called Isleton?

A. He could have called any place, I guess. I don't know.

Q. That is what I am trying to find out. Can you tell me any place?

A. I can't pinpoint no place. I mean——

Q. Any place that he called, you have no recollection? A. No.

Q. Did Mr. Sparrow talk to you about that particular subject, the phone conversations that Mr. Ege might have had during your stay there?

A. I don't think so.

Q. Oh, I see. Now, when did he first tell you about going to Phoenix, Ege, that is?

A. When I was in the Sarong Club one afternoon there.

Q. Who were you in the Sarong Club with?

A. I was with him.

Q. And anybody else?

A. I had been talking to some people.

Q. Was Mr. Ege with you continuously during

(Testimony of Constance Marie Bell.)

that afternoon [66] prior to talking to you about Phoenix?

A. No, he wasn't there. Wait a minute, prior to—when he told me about Phoenix?

Q. Yes, right.

A. What do you mean by "prior"?

Q. Before. A. Before?

Q. Yes.

A. I guess he was with me all day. I don't know.

Mr. Campbell: Your Honor, I have difficulty hearing both counsel and the witness. They have both dropped their voices.

Mr. Stout: I'm sorry.

Q. Do you know whether he talked to anybody at the Sarong Club before he first conversed with you about going to Phoenix?

A. I think that he had.

Mr. Sparrow: If your Honor please, I will object to the question as vague and indefinite. Talked with anybody about what?

The Court: If she understands the question, she can give an intelligent answer to it, why, we will see what the answer is. Do you understand the question?

A. If he talked to anybody that afternoon, that day?

Mr. Stout: Maybe I'd better rephrase the question. Withdraw it, please.

Q. Did you observe Ege talk to anybody at the Sarong Club [67] prior to his first conversing with you about going to Phoenix?

(Testimony of Constance Marie Bell.)

A. Yes. He talked to some people.

Q. All right, who?

A. Well, Judy had been in there. He talked to her.

Q. He had talked to her in your presence?

A. Yes, in my presence.

Q. About Phoenix? A. Uh-huh.

Q. He had? A. She was going there.

Q. Did Judy say she was going to Phoenix?

A. Yes.

Q. You were present at that conversation?

A. Yes.

Q. What did you say about going to Phoenix?
Did you say, "May I go along"?

A. Well, he told me that there was a job——

Q. Excuse me. Did you say, when Judy said she was going to Phoenix, did you say to Judy, "May I go along"?

A. Not to Judy, no.

Q. Did you say that to Mr. Ege? A. No.

Q. I see. After you returned from Folsom and before leaving with Judy to go to Phoenix, did you work as a prostitute in San Francisco or anywhere else? [68]

A. Would you please say that again?

Q. Yes. After you returned from Folsom but before going to Phoenix, in that intervening period of time——

A. After I went to Phoenix?

Q. No, before Phoenix and after Folsom.

A. Before Phoenix?

(Testimony of Constance Marie Bell.)

Q. And after Folsom.

A. And after Folsom?

Q. That's the continuity, isn't it?

A. I went to Folsom first and then to Phoenix.

Q. That's right, Folsom, San Francisco, Phoenix.

A. Uh-huh.

Q. All right. Now, from San Francisco. In San Francisco did you work as a prostitute?

A. No, I didn't. Not at that time.

Q. That's what I asked. Now, where was it that Ege gave you the \$50?

A. At the house.

Q. At 395 Monterey?

A. Uh-huh.

Q. Where had the conversation been held with reference to the distance between San Francisco and Phoenix, Arizona, at the Sarong? By that I mean the Sarong Club.

A. Yes, I'm pretty sure it was. I'm not positive. As I said before, a lot of these things weren't mentioned in front— [69] I mean, they weren't discussed in front of me.

Q. That is what I am trying to find out, what was discussed in front of you and what was not discussed in front of you.

A. Well, such things like mileage, because I don't know nothing about driving.

Q. That was not discussed in front of you?

A. No.

Q. That is, the distance from San Francisco to Phoenix and how much it would cost to go from San Francisco to Phoenix by car?

(Testimony of Constance Marie Bell.)

A. I was just given the money and they told me——

Q. Hold it. Do you recall testifying on direct examination in response to Mr. Sparrow's questions that there had been conversations in your presence about the cost to be incurred? That is, from San Francisco to Phoenix. I understand now from your testimony that those conversations, you heard about them from somebody else, is that right?

A. No, I didn't hear from anybody else. I had the understanding that \$50 would take care of my share of the expenses.

Q. All right. Now, that's what I want to know. What caused you—let's withdraw that. It's a little dangerous ground.

Was it anything that Ege said that this \$50 was to be your share of the expenses from San Francisco to Phoenix?

A. Eddie—yes, he told me that——

Q. He told you that? [70]

A. The money——

Q. What did he say in that regard?

A. He told me that here was \$50, this would share my expense to Phoenix. I can't remember the exact words, but——

Q. You can't remember the exact words. This was in bills, was it, that he handed to you?

A. Yes.

Q. I am not going to ask you to describe the denominations of the bills, but were those monies that had been given to you used by you for the

(Testimony of Constance Marie Bell.)

purpose of defraying your expenses from here to Phoenix? A. Did I?

Q. Did you use the money for that purpose?

A. Yes.

Q. In other words, you paid your fair share to Judy, is that right? A. Yes.

Q. Did he give Judy any money for that purpose? A. No, I don't think so, no.

Q. What conversation with Ege preceded his giving you the \$50, can you tell me?

A. I don't recollect. What was it that you said? What——

Q. What conversation preceded Ege's giving you the \$50?

A. Just that I was getting ready to go and that I needed—I mean, that I had the understanding that we were going to [71] share, and he gave me the money.

Q. Let me ask you—you were just about to say, I think—correct me if I am wrong——

A. Pardon?

Q. Correct me if I am wrong, I think you were about to say——

Mr. Sparrow: Your Honor, what he thinks she was about to say is incompetent, irrelevant and immaterial, and I will object to it on that ground.

The Court: Objection sustained. You can put that in another way, Mr. Stout.

Mr. Stout: I will, your Honor.

Q. Is it not a fact that the \$50 was given to you by Mr. Ege, if it was given to you at all, just to

(Testimony of Constance Marie Bell.)

take care of whatever expenses you might have, not with reference to Phoenix or anything else, he just gave you \$50?

A. No, it was to take me to Phoenix.

Q. It was to take you to Phoenix?

A. Yes.

Q. No question in your mind about that, is that right?

A. No.

Q. Well, can you go back and tell me what he said in that regard?

Mr. Sparrow: If your Honor please, I hesitated to object heretofore, but I think she has answered the question three or four different times, to the best of her ability, and I [72] will object to the question on the ground it is repetitious and amounts to bullying the witness.

The Court: No, I don't think so. Let her answer it again.

Q. Do you understand the question?

A. How do I know that money was given to me to go to Phoenix? We had, like I said before, we had the understanding that Judy and I were going to share the expense. I had no money to share that expense, so he, Eddie, gave it to me.

Q. (By Mr. Stout): The understanding that expenses were to be shared was with Judy?

A. Yes.

Q. When did you and Judy have such a conversation?

A. I didn't have no conversation—I mean——

(Testimony of Constance Marie Bell.)

Q. You had no discussion with Judy about sharing expenses?

A. I don't remember. I don't remember if I did or not. You got me all mixed up.

Q. I want to be fair, but I also have to represent my client. A. I know——

Mr. Sparrow: If your Honor please, I object to these speeches that counsel is making as to what his purpose may be.

Mr. Stout: They aren't speeches.

The Court: You will disregard that remark, Mr. Stout. I will take care of that when I instruct you ladies and gentlemen. [73]

Is there a question pending?

Mr. Stout: No, there is no question. I will make a question.

Q. What route did you follow going from San Francisco to Phoenix, can you tell me, what towns did you go through?

A. I went through Delano, I know.

Q. Before you got to Delano, what towns did you go through?

A. We went through Fresno?

Q. Did you go through Modesto?

A. I don't remember.

Q. Pardon?

A. I'm not sure. The first stop we made was Fresno.

Q. Was Fresno. Did you go by way of San Jose, possibly?

(Testimony of Constance Marie Bell.)

A. San Jose? I think, yes, because we went over some mountains, I think.

Q. The Pacheco Pass? A. Yes, I think so.

Q. Does that refresh your recollection?

A. I think so. I'm not sure if it was that pass or not.

Q. The first stop that was made was made in Fresno, is that correct? A. Yes.

Q. About noon?

A. I guess so. I don't remember. Probably.

Q. Does that sound about right? [74]

A. About noon, yes, I guess so.

Q. And then you went south from Fresno, is that correct? A. Yes——

Q. That is, in the general direction of Los Angeles? A. Yes, to Delano.

Q. Did you go to Bakersfield? A. Yes.

Q. You stopped in Delano for a matter of a half an hour, is that correct?

A. Yes, it was about a half an hour.

Q. That was about three hours later, was it, which would make it mid-afternoon?

A. I really don't know.

The Court: I didn't hear you.

A. I don't know. I'm getting tired.

The Court: You're getting tired?

A. I forget all this stuff.

The Court: Do you want to take a little recess?

A. No, it's o.k.

The Court: All right.

Mr. Stout: Do you want a glass of water?

The Witness: No, I don't want none.

(Testimony of Constance Marie Bell.)

The Court: She doesn't want any. Go ahead.

Q. (By Mr. Stout): You stopped in Delano for a half an hour? A. Yes. [75]

Q. Did you subsequently ever stop at this same place on the—as you did on the occasion of your first visit to Delano?

A. You mean stop at the place that I worked at before?

Q. I will rephrase the question. Withdraw it, please.

Where was the place that you stopped at in Delano? A. It was at a drugstore.

Q. Oh, excuse me. You were with Judy?

A. Yes.

Q. You met somebody there?

A. She met them. I was there with her, but I didn't know the person.

Q. You met them, too, or him or her, too?

A. I met him, too, but I didn't know him.

Q. Was he introduced to you?

A. Yes, I suppose. Yes, he was.

Q. In what manner, by what description?

A. That he owned the drugstore, I think.

Q. Oh, I see. And from Delano where did you go on this trip?

A. I think I went to Bakersfield.

Q. How much distance is there between Delano and Bakersfield, a short distance, a long distance?

A. I don't think it's too far.

Q. How long did it take you to go from Bakersfield to Delano?

(Testimony of Constance Marie Bell.)

Mr. Sparrow: If your Honor please, I will object to that [76] as calling for the opinion and conclusion of the witness and it is dependent upon a great many factors, as to the speed and the manner of transportation.

The Court: Sustain the objection. On the further ground I don't see the relevancy of that.

Mr. Stout: It is only testing the witness' recollection, your Honor.

The Court: Well——

Mr. Stout: I will withdraw the question.

The Court: We are not concerned with distance between Fresno and Delano.

Mr. Stout: This is between Bakersfield and Delano.

The Court: Or Bakersfield, whatever it is. It is not the issue here. You can find that out by looking at any map.

Q. (By Mr. Stout): From Bakersfield where did you go? A. I think Barstow.

Q. Barstow? A. Yes.

Q. And did you stop in Barstow?

A. Yes, we stopped and asked directions and had coffee.

Q. Didn't you see anybody in Barstow that you subsequently met? A. No.

Q. At a later date, that is. A. No. [77]

Q. Then you went to Phoenix, is that right?

A. Yes, but we stopped along the way, but I don't know where.

Q. Did you sleep before you got to Phoenix?

(Testimony of Constance Marie Bell.)

A. No.

Q. You drove straight through? A. Yes.

Q. I gather that Mr. Ege was not with you at any time during this trip, just you and Judy, is that right? A. No, he wasn't with us.

Q. Before leaving for Phoenix did Mr. Ege give you a phone number? No, he didn't.

Q. Did he give you the name of any person in Phoenix? A. No.

Q. Did he tell you where you were to go in Phoenix when you arrived?

A. Just that Joe Boyd was going to—to go to his place.

Q. You recall to your mind that two questions before I asked you: Were you to contact anybody in Phoenix? Your answer was no.

Is that answer now an amendment to that answer?

Mr. Sparrow: I think, if your Honor please, the question was whether or not Ege had given her a telephone number to call in Phoenix.

The Court: Let her answer the question. [78]

Do you have the question in mind?

A. Yes. I was told that I was going to go to Joe Boyd's house but I didn't know how to get in touch with him.

Q. (By Mr. Stout): Who told you, Judy, that you were going to Joe Boyd's house?

A. No. I mean, we both—I mean, she knew she was going and I knew I was going.

(Testimony of Constance Marie Bell.)

Q. And Judy told you that's where you were going, isn't that right? A. No.

Q. That isn't right?

A. (Witness shakes head in the negative.)

Q. Was the name Joe Boyd mentioned to you in San Francisco by Eddie Ege as the name Joe Boyd or was some other name used?

A. No, his name was used.

Q. His name, Joe Boyd's name, was used by Eddie Ege.

A. He owned the house before——

Q. Excuse me, that isn't what I am asking. Eddie Ege named Joe Boyd in San Francisco, is that correct? A. Yes.

Q. As the person whom you were to contact upon arrival in Phoenix?

A. I wasn't to contact him. I was just to go to his house there.

Q. As the person to whose house you were to go?

A. Yes. [79]

Q. Did he tell you——

Mr. Hagerty: Our objection still run through the cross-examination.

The Court: That's correct.

Q. (By Mr. Stout): Where did he say Joe Boyd lived?

A. I mean, just that the place was in Phoenix, Arizona. I mean——

Q. Did he give you a street address and a number of a street? A. No.

Q. Did he write it down on a slip of paper?

(Testimony of Constance Marie Bell.)

A. No.

Q. He just said: Joe Boyd, Phoenix, Arizona, is that it? A. Well, yes.

Mr. Sparrow: I believe if counsel had waited for the witness to stop before asking the next question, he would have heard the witness say Scottsdale and not Phoenix.

Mr. Stout: Thank you. May I have the answer read?

(Answer read back by reporter.)

Mr. Sparrow: The previous question was the question to which I was addressing myself.

Mr. Stout: May I have read, because——

The Court: Read it, Mr. Reporter.

(Record was read.)

Mr. Stout: That is what I heard the witness say, [80] Phoenix.

Mr. Sparrow: She said Scottsdale, Arizona.

The Court: You heard the witness say that?

Mr. Sparrow: Yes, your Honor.

Mr. Hagerty: That isn't my understanding of the record. I didn't hear it.

The Court: I didn't hear it.

A. Well, I did say it.

The Court: Did you go to Scottsdale or not?

A. Well, it wasn't Scottsdale that I was going to, but I was—I mean, when we went to Phoenix, it was in Phoenix that Judy was going to call Scottsdale or the motel there. I mean, they asked me questions that—I mean, that's—I mean, I an-

(Testimony of Constance Marie Bell.)

swer them and then they sound like I'm contradicting myself, the way he puts it.

The Court: That's all right. You're doing fine. Now, don't you allow these gentlemen—they are not trying to confuse you. They have a duty to perform to their clients, you understand.

A. I know. They're twisting me around.

The Court: They're not trying to embarrass you. They are only trying to perform their duties under their oath, you appreciate that? A. Yes.

Q. Are you getting tired? [81]

A. Oh, I can go on.

Q. You can go on. Now, talk about the Scottsdale situation. In other words, as I understand it, you were told by Ege when you got to Phoenix you were to go to Joe Boyd's house, is that right?

A. Yes.

The Court: Mr. Ege told you?

A. Yes.

The Court: You didn't know where Joe Boyd's house was, did you?

A. Well, I didn't know exactly where it was. I mean the address or anything. But it was on the outskirts of Phoenix and Scottsdale.

The Court: Scottsdale? A. Yes.

The Court: He had told you that it was on the outskirts of Phoenix?

A. Yes. I mean, I can't remember—I don't know how we got wind of it.

Mr. Stout: I didn't hear your question nor the answer.

The Court: You didn't hear my question?

(Testimony of Constance Marie Bell.)

(Record was read.)

The Court: All right, you take it from there.

Q. (By Mr. Stout): Is Scottsdale a suburb? That is, is it directly alongside of Phoenix, [82] Arizona?

A. I am pretty sure it is. I know it's not very far from Phoenix. It's not more than fifteen or—fifteen minutes to a half an hour drive. I know that. So it couldn't be very far.

Q. Are there houses that go from Phoenix all the way over to Scottsdale? In other words, is it continuously built up? You see, I don't know this, and I have to ask you these questions.

Mr. Sparrow: If your Honor please, I don't see where there is any relevancy in the question, and I will object to it on that ground.

The Court: Tell me this, when you got to Phoenix, Arizona, what did you do?

A. Judy made this phone call. She had the phone number to call Joe Boyd—

Mr. Stout: Excuse me, may I interrupt?

The Witness: Pardon?

Mr. Stout: Does your Honor want her to continue with that answer?

The Court: I am going to ask a few questions.

Mr. Stout: Sorry to interrupt.

The Court: Judy had the phone number to call Joe Boyd, is that right?

A. Yes, sir.

Q. Did she call him? [83] A. Yes.

The Court: Did she get him on the phone?

(Testimony of Constance Marie Bell.)

A. Well, the first time she called, she didn't get him on the phone. He had left a message, I think, to call some place else.

The Court: Were you present when she telephoned to him?

A. I was in the restaurant, yes.

The Court: And then you went to a coffee shop, did you not?

A. I think we were in a restaurant, in a coffee shop, when we called.

The Court: At the time you made the phone call?

A. Uh-huh.

Q. And when you made that phone call you were told to go to some maid's house, you told us on your direct examination, is that right?

A. Yes.

Q. (By the Court): And you did go to the maid's house? A. Yes.

Q. Was that in Phoenix?

The Court: You stayed there a few minutes, is that right? A. Yes.

Q. And then the maid and her husband drove you to Scottsdale, [84] is that right? A. Yes.

The Court: And there was a girl there and another girl by the name of Ginger, is that right?

A. Yes.

The Court: And then you saw Joe Boyd, is that right?

A. Well, not immediately. Later on that day I saw him.

(Testimony of Constance Marie Bell.)

The Court: That is what I mean.

A. Uh-huh.

Q. And that was a regular house on the outskirts of Phoenix or Scottsdale? A. Yes.

Q. You said it was in the desert?

A. There's sparse—sparsely——

Q. Sparsely settled around there, is that right—is that what you mean? A. Yes.

Q. And you slept all day the first day because you were tired after your journey, is that right?

A. Uh-huh.

Q. And then you went to work, engaging in prostitution the following day, is that correct?

A. I might have gone that evening. I think I was up, but I don't know. I don't remember if I did.

Mr. Stout: What was that? [85]

The Court: "I might have gone that evening. I don't remember."

A. I slept all the rest of the day.

The Court: You mean you might have gone to work that evening?

A. That evening, yes.

The Court: I think that covers that situation sufficiently. Let's go on to something else.

Mr. Stout: May I just go back and ask a couple of questions with reference to the phone conversation in the restaurant—May it please the Court——

The Court: All right.

Q. (By Mr. Stout): You were not present at the time that Judy called the number in Phoenix, were you? A. I was in the restaurant.

(Testimony of Constance Marie Bell.)

Q. You were in the restaurant, the phone booth, the phone was some distance from you, was it not?

A. Yes.

Q. You did not hear what Judy said to the person with whom she had the telephone conversation?

A. I didn't hear it at the time she was phoning, but she told me afterwards.

Q. She told you what the substance of the discussion was, is that correct? A. Yes. [86]

Q. Did Judy have the telephone number on a slip of paper, or did she use the normal telephone directory for the purpose of determining the number? A. She had it on a piece of paper.

Q. She did?

A. (Witness nods affirmative).

Q. You had seen that piece of paper beforehand?

A. No, I don't think so. She took it out of her wallet.

Q. Had you ever seen Eddie Ege give her a phone number on a piece of paper in San Francisco before you went to Phoenix?

A. I don't remember.

Q. Did you ever see Eddie Ege write any directions of any nature or description in your presence about this trip to Phoenix? A. Write, no.

Mr. Stout: Thank you, your Honor. That covers that.

The Court: All right.

Q. (By Mr. Stout): Should we ascertain the

(Testimony of Constance Marie Bell.)

month that this visit—or this first visit to Phoenix was?

Mr. Sparrow: If your Honor please, that has been asked and answered.

The Court: Sustained.

Q. (By Mr. Stout): Can you tell us in what portion of October this visit was to Phoenix and Scottsdale?

A. I think it was around the first of October, between the [87] 1st and the 15th.

Q. Did you receive money at the end of each evening's or each day's activity?

A. Yes, I did.

Q. What did you do with the money? Did you keep it? A. Yes.

Q. I think that you said during the course of the time you were there that you received some seven or eight hundred dollars, is that correct?

A. Not there.

Q. Not there. Well let me ask you this. I can't recall from my recollection how long you were in Scottsdale. Can you tell me again?

A. I was there, oh, a week to ten days. No, wait a minute. I could have been there two weeks because I was sick there for a couple of days. I know I worked some. I don't remember——

Q. Beg your pardon?

A. I would say about a week to ten days.

Q. How much did you earn during that period?

A. Well, not too much, because the business wasn't too good.

(Testimony of Constance Marie Bell.)

Q. A couple of hundred dollars?

A. I would say maybe a couple of hundred dollars.

Q. Was this Ginger that you saw in Scottsdale the same Ginger that you had seen in Folsom, or is this another Ginger?

A. It was another Ginger. [88]

Q. I take it that this was another Ginger than the Ginger that you knew in San Francisco, right?

A. Yes. Well, the Ginger that I knew in—that I had met in San Francisco and the Ginger that was in Folsom were one and the same.

Q. They were one and the same and they were both different from the Ginger in Scottsdale?

Mr. Sparrow: If your Honor please——

A. She was different from the one in Scottsdale.

Mr. Sparrow: Counsel said—characterizes “they are both different from the one in Scottsdale.” She said that the Ginger in Folsom and the Ginger in San Francisco was one person.

The Court: Is that right?

A. Yes.

Q. (By Mr. Stout): Did you know the phone number of 395 Monterey Boulevard here in San Francisco?

A. I knew it at one time, but I can't say it now.

Q. Did you know that phone number when you were in Scottsdale, Arizona? A. Yes, I did.

Q. Did you yourself call from Scottsdale, Arizona to San Francisco?

A. Not from Scottsdale, no.

(Testimony of Constance Marie Bell.)

Q. Or from Phoenix, either one. [89]

A. From Phoenix.

Q. You yourself called?

A. I called San Francisco, but I didn't call out to Monterey Boulevard.

Q. You did not? A. No.

Q. Did you call the Club Sarong here in San Francisco for the purpose of contacting Mr. Ege?

A. Uh-huh.

Q. Is that right? A. Yes.

Q. About how many days was it after you were in Scottsdale that you had this conversation?

A. It wasn't after I was in Scottsdale. It was before I went to Scottsdale.

Q. While you were in Phoenix?

Mr. Sparrow: Asked and answered, if your Honor please. I will object to it on that ground.

The Court: Where were you when you had this conversation?

A. I was—I didn't have a conversation in Phoenix. I made the call.

Q. (By Mr. Stout): Where?

A. Pardon?

Q. Where did you make the call?

A. In Phoenix. [90]

Q. Yes. A. At the maid's house.

Q. At the maid's house?

A. (Witness nods affirmatively.)

Q. That was how many days after you had been either in Phoenix or Scottsdale?

(Testimony of Constance Marie Bell.)

A. It was the day that I arrived in Phoenix, the first.

Q. You subsequently had another telephone conversation with Ege after—that is, one that occurred after your arrival in Phoenix and Scottsdale, is that correct? A. Yes.

Q. All right. Now, that conversation was how many days after the date of your arrival?

A. Oh, if I had been there two weeks or so, it must have been two weeks or so after I was there.

Q. That's the best of your recollection?

A. Between a week and two weeks.

Q. All right. Can you tell me whether you placed the call or whether the call was placed to you?

A. The call was placed to me.

Q. To you?

A. (Witness nods affirmatively.)

Q. Where were you at the time you received that call? A. In the gas station.

Q. And that gas station was in Phoenix or in Scottsdale? [91]

A. It was in Scottsdale.

Q. In your first conversation with Ege—I am going back to the previous one that you related to us as having occurred upon your arrival, the one that you made at the maid's house, according to your testimony—did you receive instructions from Ege that he was going to place a call to you at a gas station? A. No, not there I didn't get it.

Q. Not at that time? A. No.

Q. Did you receive a letter from Ege to the

(Testimony of Constance Marie Bell.)

effect that he was going to telephone you at a gas station, a service station? A. No.

Q. From whom did you receive those instructions? A. Judy told me.

Q. Judy. And that was at the place in Scottsdale that these instructions were given to you?

A. I am pretty sure it was Scottsdale.

Q. Was anyone present in the gasoline station at the time this conversation was had by you with Mr. Ege? Was Judy along? A. Yes.

Q. She was along. Did she likewise talk to Mr. Ege in this same telephone conversation?

A. No, I don't think so. [92]

Q. Just you? A. Uh-huh.

Q. But she was close by, is that the answer?

A. No, she was in the car.

Q. Did Mr. Ege tell you to tell Judy to go to Delano, too? A. No.

Q. He just told you to go to Delano, is that correct? A. Uh-huh.

Q. Had you given Ege any portion of the money that you had earned while you were in Scottsdale prior to leaving Scottsdale and going by plane to Los Angeles?

A. No, I hadn't given him any of it.

Q. You went by air from Phoenix, you have said? A. Uh-huh.

Q. Can you tell me what line?

A. I think it's TWA or United, either one; I don't know which one goes through. I think it's TWA.

(Testimony of Constance Marie Bell.)

Mr. Hagerty: What was that?

The Court: "I think it was TWA or United."

I don't see what difference it makes. She got there in an airplane.

Q. (By Mr. Stout): After you got to Los Angeles, as I understand it, you made a telephone call, is that correct? A. Yes.

Q. Where had you obtained that number that you subsequently [93] called?

A. From Eddie.

Q. In that conversation that you had with him while at Scottsdale? A. Yes.

Q. You went by plane from Los Angeles to Bakersfield, am I correct? A. Yes.

Q. While you were in Delano you have told us that you were working a house of prostitution there, is that correct? A. While I was in Delano?

Q. Yes.

A. Yes, I worked in a house of prostitution.

Q. Have you told us the name of the madam of the establishment?

A. Well, it was known as Kitty's Place, but she wasn't there.

Q. Well, excuse me; I didn't ask you that. Who was there? A. Bobby.

Q. You have mentioned "Bobby" before. Is that the same Bobby who was in Folsom?

A. No, it was a different Bobby.

Q. How many girls were working at Kitty's Place?

A. Well, Bobby had been working until I got

(Testimony of Constance Marie Bell.)

there and then when I was there I think another girl came in that evening. [94]

Q. You were there how long?

A. Oh, I was there a couple of weeks, too.

Q. Can you place the month?

A. It must have been the latter part of October and the first of November.

Q. Did anything occur to you that would cause that particular period of time to be in your mind?

A. Just that I know that it was September that all the other things happened and they didn't—

Q. So it is by the process of the addition of weeks onto that?

A. Yes, because I was out of the business the first of the year, '54, so—

Q. Out of what? The rackets?

A. Well, I was arrested in the first part of '54.

Q. That was down the Valley, is that correct, at Barstow?

A. No, no, it was here in the city.

Q. Oh, I see. Excuse me. How many girls were working in Delano while you were there?

A. While I was there, altogether there was about four or five.

Q. You have named for us Kitty and yourself—

A. Kitty wasn't.

Q. Excuse me. I am sorry. I take that back. I don't want to confuse you. I did that inadvertently. Bobby—you have [95] named Bobby.

A. Uh-huh.

Q. And yourself. A. Uh-huh.

(Testimony of Constance Marie Bell.)

Q. What other girls were there?

A. There was two other girls, but I can't remember their names.

Q. You were with those girls for two weeks?

A. Well, I think one's name was Dolly.

Q. Pardon? A. Dolly.

Q. Dolly?

A. Uh-huh. And the other girl had an odd, foreign name. I can't—I mean, I can't remember.

Q. You have no recollection of the other girl's name? A. No.

Q. How long was this foreign named girl there? Was she there the entire time that you were there?

A. I don't think so. I think she came about a week or so after I was there.

Q. How about Dolly? Was she there the entire time?

A. She was there most of the time, yes. She was there a day or two after I was.

Q. And Bobby was likewise there most of the time?

A. Bobby was there before I was. [96]

Q. Was Judy anywhere about Delano at that time?

A. Well, she—not when I first got there, but she did get there later on, about a week.

Q. About a week later?

A. I think about a week or maybe less than that.

Q. Did she come by her Oldsmobile?

A. Yes, she had to drive her car.

(Testimony of Constance Marie Bell.)

Q. She didn't work at Kitty's Place?

A. No.

Q. Did you see her while you were in Delano?

A. No, but I got a message from her.

Q. You never even talked to her while you were in Delano?

A. I talked to her on the phone once.

Q. But you never saw her?

A. No, I didn't.

Q. You never turned any of your earnings over to Judy while you were in Delano? A. No.

Q. When you saw Mr. Ege some time after having been in Delano, didn't you tell Mr. Ege that you had given the money that you had earned to Judy? A. No.

Q. That isn't a fact?

A. You say that I said that I gave my money to Judy?

Mr. Sparrow: That assumes something not in evidence, if [97] your Honor please, and I will object to it on that ground.

The Court: Overruled. But I suggest you change its form.

Q. (By Mr. Stout): Is it not a fact that you told Mr. Ege when you saw him in Fresno that you had given your money to Judy, the money that you had earned in Delano?

A. I never gave him (sic) no money.

Q. Did you tell him that you did? A. No.

Q. What did you do with the seven or eight hundred dollars?

(Testimony of Constance Marie Bell.)

A. Well, parts of it I had spent on different things like——

Q. For yourself?

A. For myself and the other part I gave to him.

Q. And how much of that seven or eight hundred dollars was it that you gave to Mr. Ege?

A. A couple of hundred dollars, about three or four.

Q. Three or four hundred?

A. Yes. I am not sure.

Q. Pardon? You dropped your voice.

The Court: "I am not sure."

Q. (By Mr. Stout): How did you go from Delano to Fresno?

A. How did I go? From Delano to Fresno?

Q. Yes, ma'am.

A. I went in a taxicab.

Q. That's about a hundred miles, isn't it? [98]

Mr. Sparrow: If your Honor please, I will object to the question as irrelevant, incompetent, immaterial.

The Court: Sustained.

Mr. Sparrow: Also calls for opinion and conclusion.

Q. (By Mr. Stout): How much did it cost you to go from Delano to Fresno, if you know?

Mr. Sparrow: If your Honor please, I will object to that as having—not tending to prove or disprove any of the issues of this case.

The Court: Sustained.

(Testimony of Constance Marie Bell.)

Q. (By Mr. Stout): Where did you go when you got to Fresno?

A. I went to my sister's.

Q. Does she live in Fresno? A. Yes.

Q. Did you make a phone call from your sister's place to 395 Monterey Boulevard? A. No.

Q. In what manner did you communicate with Mr. Ege to tell him that you were in Fresno at your sister's?

A. Oh, he knew that my sister lived in Fresno on that Blackstone——

Q. I haven't asked you that.

A. He knew that she lived there and he came up and got me.

Q. You had not communicated with him?

A. I am pretty sure I had not, no. [99]

Q. After he came to Fresno, he took you back to San Francisco, is that correct? A. Yes.

Q. Can you place that month for me and in what portion of the month?

A. It was before Christmas.

Q. In December or in November?

A. In November.

Q. The latter part of November or the early part or what?

A. I forget. It was about the middle of November, some place around there; I am not too sure. It was in November some time.

Q. I am sorry?

(Testimony of Constance Marie Bell.)

A. It was in November some time. I am not sure when.

Q. Did you go to Isleton during the period of time that you were with Eddie Ege?

A. Yes, I was in Isleton.

Q. What month was that?

A. I can't remember. I think it was—I think it was around in November.

Q. You said you were in Sacramento.

A. (Witness nods head in affirmative.)

Q. Is that correct? A. Yes.

Q. In Sacramento County? [100]

A. Pardon me?

Q. In Sacramento County?

A. It was in one of the counties. I think Yolo County. They call it Sacramento. I am not sure if they do or not.

Q. What town, can you tell me?

A. I think it was in Yolo.

Q. Pardon? A. Yola (sic).

Q. Eola (sic)? A. No. Yola (sic).

The Court: She means Yolo.

Q. (By Mr. Stout): Yolo City or Yolo County, can you tell me?

A. I don't know. Yolo.

Q. Y-o-l-o? A. Yes.

Q. All right. Now, that is the name of the county. Let's establish that between ourselves. Now, what town? A. Yolo. I don't—

Q. How far from Sacramento was that?

(Testimony of Constance Marie Bell.)

Mr. Sparrow: Are you talking about Sacramento County or the City of Sacramento?

Mr. Stout: I am talking about the city of Sacramento, Mr. Sparrow.

A. I don't recall how far it is. [101]

Q. (By Mr. Stout): Was it near Woodland?

A. No, I don't think it's that far away from Sacramento.

Q. Are you familiar with Sacramento, the city of Sacramento, that is? A. Not too well.

Mr. Sparrow: I will object to this line of questioning as irrelevant, incompetent, immaterial, and not tending to prove or disprove any of the issues of this case.

The Court: The objection is sustained. The issue of the witness' knowledge of geography or lack of it is not before this jury.

Q. (By Mr. Stout): This place to which you went that you have described as Yolo, where with reference to Sacramento was it?

Mr. Sparrow: Object to the question on the same ground.

The Court: I will let her answer that if she can.

A. Well, it isn't too far. It couldn't be much farther than five miles away from the heart of the city.

Q. (By Mr. Stout): From the heart of the city of Sacramento? A. Uh-huh.

Q. How long did you stay at Yolo?

A. Not very long.

Q. A day? Two days?

(Testimony of Constance Marie Bell.)

A. Oh, no, about a week. [102]

Q. About a week? A. Yes.

Q. What was the name of the person who ran that establishment? A. Florence, I think.

Q. Florence? A. Uh-huh.

Q. Is Florence here in court?

Mr. Sparrow: I object to that question as irrelevant, incompetent and immaterial.

The Court: Sustained.

Q. (By Mr. Stout): Can you identify the lady other than by the name Florence?

A. No. I mean—I know that she's a big woman.

Q. How many girls were in the establishment operated by Florence?

Mr. Sparrow: If your Honor please, I will object to that as irrelevant, incompetent and immaterial.

The Court: Let her answer if she knows.

A. Not too many. Quite a few.

Q. (By Mr. Stout): Pardon?

A. Quite a few, I would say. I can't say exactly.

Q. I can't tell what "quite a few" is. Would you enlighten me?

A. About eight, I would say. [103]

Q. Eight?

A. Yes. I am not sure, though.

Q. Was Judy there? A. No.

Q. Was Ginger of Folsom or San Francisco there? A. No.

Q. Was Ginger of Scottsdale there?

A. No.

(Testimony of Constance Marie Bell.)

Q. Were any girls there whose names you have previously given to us? A. No.

Q. How much did you earn while you were in Yolo? A. Not too much.

Q. How much

A. Maybe a hundred dollars or so.

Q. You were there a week? A. Uh-huh.

Q. What did you do with the hundred dollars?

A. I brought it home.

Q. And gave it to Mr. Ege? A. Yes.

Q. Is that right? A. Yes.

Q. Now, at Isleton, how long were you in Isleton? A. I don't know. About a week. [104]

Q. A week? A. Yes.

Q. Was that in December?

A. I remember I was there.

Q. Was that in November or December?

A. Huh?

Q. Was that in December or November of 1953?

A. It must have been around—I don't know any more; I forget.

Q. How many girls were in the establishment in Isleton?

A. I don't know. Maybe myself and another.

Q. What is the name of the person who operated the Isleton establishment? A. Ginger.

Q. The Ginger of Folsom and San Francisco?

A. No.

Q. The Ginger of Scottsdale? A. No.

Q. How much did you earn while you were working for Ginger of Isleton? A. Not much.

(Testimony of Constance Marie Bell.)

Q. Your best estimate.

A. About \$50 or so, I am not sure.

Q. What did you do with that money?

A. I think I kept it. [105]

Q. You testified on direct examination in response to a question by Mr. Sparrow that you gave that money to Ege, is that correct?

A. I don't know. I am just getting so——

Q. A man is on trial here. I have to ask these questions.

Mr. Sparrow: If your Honor please, I will object to these speeches——

The Court: Never mind the extra-curricular remarks, counsel.

The Witness: What has that got to do with his trial, being on trial?

The Court: Just a moment. Just a moment: Just calm yourself. Now take it easy. You have been doing very nicely. Just answer the gentleman's questions. If you don't remember, just say so. Don't let him get you excited. I'll protect you. That is what I am here for.

Mr. Stout: I hope she doesn't need protection, your Honor.

The Court: If she does, she will get it.

Mr. Stout: I won't put her in a spot where your Honor will have to protect her. I assure you of that.

The Court: You better not.

Mr. Stout: I wouldn't under any circumstances. I don't try my cases that way.

(Testimony of Constance Marie Bell.)

The Court: Go ahead and ask your next [106] question.

Mr. Stout: My next question was with reference to your direct examination here this afternoon in response to questions—this morning in response to questions by Mr. Sparrow. A. Yes.

Q. Did you tell Mr. Sparrow at that time—isn't it a fact that you told Mr. Sparrow this morning that you had given the money to Ege?

A. Is it?

Q. Did you? A. Did I?

Q. Well, what is the fact?

A. I don't remember. You have got me so mixed up now I don't even know what I am talking about.

The Court: We are going to take the recess. You go home and compose yourself and don't worry about anything, and come back tomorrow morning at 10:00 o'clock refreshed. You understand? You understand what I am saying?

We will take a recess now, ladies and gentlemen of the jury, until tomorrow morning at 10:00 o'clock. In the meantime, you are urged and admonished to follow the admonition of the Court not to discuss the case among yourselves or with anybody else and not to form or express any opinion about it until it is finally submitted to you.

Now, you may retire. I have a matter to take up with counsel out of the presence of the jury. [107]

(The jury was excused.)

(Testimony of Constance Marie Bell.)

(Thereupon, out of the presence of the jury discussion between the Court, counsel and the witness relative to the witness' emotional distress and reluctance to testify because of possible retaliation.)

(Thereupon, an adjournment was taken to tomorrow, Tuesday, September 27th, 1955, at 10:00 o'clock a.m.) [108]

September 27, 1955—10:00

The Clerk: United States of America vs. Ege, Boyd and Bruno, for trial.

The Court: You may proceed.

Cross-Examination
(Resumed)

By Mr. Stout:

Q. Are you familiar with the Westlake District which immediately adjoins San Francisco?

A. No, I am not.

Q. You are not familiar with that district?

A. I have been there but I am not—I don't know it, the streets or anything.

Q. Did you go to that district during the time in question in this case, that is, during the month of September, 1953?

A. I can't remember.

Q. Do you recall—perhaps this will refresh your recollection—that Judy Berg has a mother who lives in that district?

A. Is that Westlake?

Q. Yes.

(Testimony of Constance Marie Bell.)

A. Well, I was over to her mother's house but——

Q. You were over to her mother's house. Was that during this time in question, during September, 1953? A. I think so. I am not sure.

Q. All right. Now, is it not a fact that Judy has a small child who lives with her mother over there in the Westlake [110] district and whom you saw on your visit to that home?

A. There was a child there.

Q. And the child was introduced to you as a child of Judy, is that correct?

A. I think so. I am not sure.

Q. You stayed over at that address prior to going to Phoenix, Arizona, did you not?

A. I wasn't there any length of time.

Q. You were there at least two days, were you not? A. Not continuously, days, no.

Q. You lived—you spent the night there before you went to Phoenix, did you not?

A. One night.

Q. One night. Was that the night immediately before you left to go to Phoenix?

A. No, it wasn't

Q. What night was that?

A. I don't remember.

Q. However, it was after you left 395 Monterey Boulevard and before you went to Phoenix, was it not?

A. I was off and on from 395 Monterey Boulevard.

(Testimony of Constance Marie Bell.)

Q. Please try to answer my question, if you will.

A. I don't remember.

Q. Is it possible that from 395 Monterey Boulevard you went to this address, the home of Judy Berg's mother, before you [111] went to Phoenix, Arizona? A. Before I went to Phoenix?

Q. Yes, ma'am. A. Yes, I think so.

Q. Is it not a fact that it was there, from that house, that the phone calls were made and received from Phoenix, Arizona, and not from 395 Monterey Boulevard?

A. I have no way of knowing about her phone calls.

Q. You are talking about Judy? A. Yes.

Q. Is it not a fact that you know of your own knowledge, that you were so told by Judy, that she had been in contact with Phoenix, Arizona, while you were staying at that location? A. No.

Q. She did not tell you? A. No.

Q. As I understand it, after you left Phoenix, or after you left Scottsdale you went to Delano, is that correct? A. That is right.

Q. And then——

Excuse me. Did your Honor interrupt?

The Court: No.

Mr. Stout: I thought you had.

The Court: I dropped my glasses. Do you have any objection to that? [112]

Mr. Stout: Your Honor, I heard some noise; I couldn't ascertain its location.

The Court: Go ahead.

(Testimony of Constance Marie Bell.)

Q. (By Mr. Stout): Let's go back again and see if we can't pick up that train. You went from Delano to Fresno to your sister, is that correct?

A. Yes, I think.

Q. Will you tell me, if you will, when it was that you told Eddie Ege of your sister and her address in Fresno?

A. I don't remember when.

Q. Is it not a fact that on no occasion did you tell Eddie Ege that you had a sister who lived in Fresno?

A. I did, too, and he knew it because my sister could prove it.

Q. Tell me when.

A. I don't remember when.

Q. Was it before he came to Fresno or after he came to Fresno?

A. I don't remember.

Q. Is there something about that detail that causes you to be unable to remember?

A. Your making a liar out of me, that's why.

Q. I will not comment. After you were in Fresno you came back to San Francisco, is that correct?

A. Yes. [113]

Q. And you went to 395 Monterey; is that likewise not again true?

A. Eddie brought me back to 395 Monterey.

Q. All right. After you were brought back to San Francisco, as I recall your testimony, you went from there to Barstow, California, is that correct?

A. I can't remember if it was exactly then I went to Barstow or if I went some place else in between.

(Testimony of Constance Marie Bell.)

Q. In between? A. Yes.

Q. But it was after you returned from Fresno that you went to Barstow, whether it was the next successive trip or something else intervened you are not sure? A. Yes.

Q. All right. Does the trip to Suisun precede or follow the trip to Barstow?

A. It was after I went to Barstow.

Q. It was after?

A. (Witness nods head in affirmative.)

Q. Was it then after you were in Las Vegas?

A. Yes.

Q. What month and in what year would you place that, can you tell me?

A. It was after the first of the year.

Q. After you had separated and were no longer in the company [114] of Eddie Ege, is that correct?

A. I imagine so.

Mr. Stout: Your Honor, may we note for the record that this testimony was elicited and is not binding upon the defendant at this time because it occurs after the dates set forth in the indictment.

The Court: If the testimony shows that, why, the record will so reflect.

Mr. Stout: I would like to reserve a ruling on that until the conclusion of the testimony, in accordance with your Honor's statement of yesterday.

Q. Can you tell me with whom you went to Barstow? Can you give me any names?

A. There was a girl named Candy.

(Testimony of Constance Marie Bell.)

Q. Again, please? A. A girl named Candy.

Q. C-a-n-d-y? A. Yes.

Q. All right.

A. There were two other girls, but we got in an accident and they left immediately.

Q. I want to ask you about that accident. What was the name of the man? Do you know his name? Can you recall that? A. No, I have forgotten.

Q. And there was an accident between San Francisco and [115] Barstow? That is correct, is it not?

A. Yes.

Q. And in that accident, as I recall, the other two girls were hurt, as well as the man who was the driver, is that right? A. Yes.

Q. And you received superficial injuries, that is, very small injuries? A. Yes.

Q. And you were able to proceed on to Barstow?

A. Yes.

Q. While the others, I think, had to be hospitalized? A. No, they all went to Barstow, too.

Q. They all went to Barstow? A. Yes.

Q. They——

A. They weren't critically injured.

Q. Pardon?

A. They weren't critically injured. None of them went to the hospital or——

Q. No one went to the hospital? It was just the question of bandaging or a few things like that?

A. Yes, we went for first aid.

Q. Can you tell me approximately when it was that you arrived in Barstow, the month? Was it the

(Testimony of Constance Marie Bell.)

latter part of [116] November, the early part of December?

A. It was in November, I am almost sure; the beginning of December, I can't remember when.

Q. Around in those two months?

A. Somewhere in there.

Q. The beginning of December or the latter part of November? A. Somewheres in there, yes.

Q. And that, of course, is 1953? A. Yes.

Q. Now, as I understand it, from what you testified to yesterday, you left from 395 Monterey Boulevard to go to Barstow, is that correct? A. Yes.

Q. The man in whose car you rode, did he come to 395 Monterey Boulevard to pick you up?

A. Yes.

Q. And it was from there that you went to the Club Sarong on Geary and had this meeting, the meeting there, with the other two girls, one of whom you have identified as Candy? A. Yes.

Q. Was Ege present at the time you left?

A. Yes, from his home.

Q. From 395 Monterey? A. Yes.

Q. Can you tell me conversations that you might have had [117] with Ege at or about that time immediately prior to your leaving for Barstow?

A. Nothing that amounts to anything. I don't think I—I can't remember anything.

Q. At one time you did know the name of the man who drove the car, is that correct?

A. At one time did I know his name?

Q. Yes.

(Testimony of Constance Marie Bell.)

A. Yes, I did, but I can't remember it.

Q. Who introduced you to that man?

A. Eddie.

Q. Pardon? A. Eddie.

Q. At 395 Monterey?

A. Yes, that's the first time I ever saw him.

Q. I see. Did he tell you at the time of the introduction or prior to that introduction the purpose for which you were to meet this man?

A. On that day he came home, he told me that I was going to Barstow, that this fellow came in from Barstow, and we were going to go up there to work—that I was, anyway.

Mr. Stout: Give me that again. May I have that answer read back, your Honor?

(Answer read.)

Q. (By Mr. Stout): Did you work in Barstow for any [118] appreciable period of time, days, weeks, month?

A. I would say a week at the longest. I mean, yes, about a week or so; I don't remember now.

Q. You made some money? A. Well, yes.

Q. Can you tell me how much you yourself made?

A. Oh, about a hundred dollars or so.

Q. Did you keep that money?

A. Maybe more. No, Eddie came by and got it.

Q. That was the time you went to Las Vegas?

A. No. On his way into Las Vegas he stopped by there and picked it up.

(Testimony of Constance Marie Bell.)

Q. Can you place that trip, the date of that trip for me?

A. No, I can't. Some time in between all these other times. I mean, what I have already said.

Q. He went on, then, from Barstow and left you there, is that correct?

A. He came in to Barstow on his way to Las Vegas. I was in Barstow working and he stopped by and got that money.

Q. And went on? A. And went on.

Q. And left you behind?

A. Yes. I was working there still.

Q. I see. Now, how many days after Mr. Ege's trip was it that this raid that you have described occurred? [119]

A. I think about two days or three maybe.

Q. You were arrested, is that correct?

A. Yes.

Q. You made bail?

A. Yes. I didn't make it, but somebody made it for me.

Q. Somebody put up the bail for you?

A. Yes.

Q. Where did you go after that episode?

A. Well, I went—I called home and then I went back to this place—wait. Yes, the first night that we made bail we went back to this other place, and then——

Q. Are you talking about the place in Newberry?

A. In Newberry, yes.

(Testimony of Constance Marie Bell.)

Q. Yes.

A. Then I—we went back the next day and made—we had to get out of town.

Q. All right. It was from there, from Newberry that you went to Las Vegas, is that correct?

A. From Barstow.

Q. From Newberry or Barstow? A. Yes.

Q. You went to Las Vegas?

A. From that house there.

Q. Yes. All right. Now, place, if you will, for me that date, approximately. [120]

A. Like I said, somewhere in November.

Q. How close——

A. The first of December, I don't remember.

Q. How close to Christmas was it?

A. It wasn't very far because I was home for Christmas.

Q. And "home," you mean here in San Francisco? A. No, with my sister.

Q. I see. In Fresno? A. Uh-huh.

Q. Now, tell me this: What means of transportation was utilized from Newberry or the—to Las Vegas? Was that a car? A. Yes.

Q. And was this the Cadillac again? A. Yes.

Q. The same Cadillac or a different one?

A. The same one.

Q. And you went to Las Vegas, is that correct?

A. Yes.

Q. And Mr. Ege drove you to Las Vegas; is that likewise not true? A. Yes.

Q. All right. Now, had you ever been to Las Vegas before? A. No.

(Testimony of Constance Marie Bell.)

Q. And how long did you stay in Las Vegas on the occasion of that visit? [121]

A. Just about two days or so.

Q. Two days? A. Or three.

Q. You have told us before that you left Las Vegas by bus. Is that so? A. No.

Q. Do you recall how you left Las Vegas?

A. Oh, left Las Vegas. I beg your pardon. I left Las Vegas by bus, yes.

Q. By bus? A. Yes.

Q. After you had quarreled with Mr. Ege?

A. Pardon?

Q. After you had quarreled with Mr. Ege.

A. Yes.

Q. You said that you went to a place called Roxy's, is that correct? A. Yes.

Q. Had you ever seen Roxy's before?

A. No.

Q. Can you describe those premises for me?

A. It's just——

Q. Where is it?

A. I mean, what I can recall of it, it is just a great big—like a camp, like. [122]

Q. Camp?

A. Not a camp, but it's like a—a little place all on its own. I mean, it's like a little——

Q. Is it in the town portion of Las Vegas?

A. No, it's further out.

Q. It's further out? A. Uh-huh.

Q. Are there any buildings around it?

A. I don't think so.

(Testimony of Constance Marie Bell.)

Q. It's all by itself. Is it a one story building or a two story building? Describe it from the size point of view, the height point of view.

A. I can't remember. I don't know whether it was one or two. It was one, like a little place all on its own. I mean, it was—I can't remember. It was—I only went there in the night and I left there the very next evening—I mean, that evening when I got off the shift.

Q. All right. Can you tell me any of the names of the people that you saw at Roxy's?

Mr. Sparrow: If your Honor please, I will object to this as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. (By Mr. Stout): Is there anything unusual about Roxy's that is recalled to your mind at this time?

A. Well, it's different than most places. [123]

Q. Do you recall anything unusual about the office of the establishment?

Mr. Sparrow: If your Honor please, I take it the purpose of the cross-examination is to test the witness' recollection. I think it has been sufficiently tested and I will object to the question as irrelevant, incompetent, immaterial.

The Court: Objection sustained.

Mr. Stout: May I be heard very briefly?

The Court: The court has ruled.

Q. (By Mr. Stout): Do you recall any clocks in the place, in the establishment?

(Testimony of Constance Marie Bell.)

A. Oh, no, I don't recall a clock.

Q. You don't recall any clocks?

A. I couldn't tell you whether a clock was out in the hallway.

Mr. Sparrow: Object to the question on the grounds it is incompetent, irrelevant and immaterial. Ask that the question and answer be stricken.

The Court: Sustained.

Q. (By Mr. Stout): Do you recall the price that was charged for any acts of prostitution in that establishment? A. \$5.00.

Q. How much?

A. I think it was \$5.00. I am not sure.

Q. Do you recall for what period of time that was to cover? [124]

Mr. Sparrow: I will object to that question as irrelevant, incompetent and immaterial.

The Court: The objection is sustained.

Mr. Stout: May I be heard briefly?

The Court: The Court has ruled.

Mr. Stout: Do I understand by your Honor's ruling that I am precluded from asking further questions on this particular subject?

The Court: I think that is a reasonable assumption.

Mr. Stout: That's what I am forced to deduce from your Honor's rulings and I wanted to ascertain that as a fact before I proceeded any further.

The Court: You may regard it as a fact.

Mr. Stout: Thank you.

(Testimony of Constance Marie Bell.)

Q. Do you recall—excuse me. Withdraw that in accordance with your Honor's ruling.

After you left this establishment did you return to Las Vegas itself? A. Yes, to get the bus.

Q. In a bus? A. I said to get the bus.

Q. To get the bus. A. When I left.

Q. Did you see Mr. Ege before you took the bus?

A. Yes, when I had the quarrel with him. [125]

Q. What?

A. When I had the quarrel with him.

Q. And can you tell me where the quarrel took place?

A. It was in some little place downtown. I don't remember where.

Q. In a bar? A. Yes.

Q. You have no recollection of the name?

A. No. It was a—I couldn't be sure, no.

Q. Going back, if I may, just briefly, to the house at which you stayed before going to Phoenix on the first occasion. A. Uh-huh.

Q. Judy's mother's house. Do I understand that you talked to no one on the telephone during that period of time, you personally talked to no one?

A. I may have talked to someone, I don't know.

Q. I will make it more specific. Did you talk to anyone with reference to the Phoenix-Scottsborough (sic) situation? A. No, I didn't.

Q. You did not?

A. (Witness shakes head in negative.)

(Testimony of Constance Marie Bell.)

Q. Did Mr. Ege, to your knowledge, know that you were at Judy's mother's house?

A. Yes, he did.

Q. Will you tell me how you know that to be a fact? [126]

A. Well, I left—I was at his house and she was going over to her house and he told me to take the ride with her, and I went over with her.

Q. I see.

A. That was the first time I had ever been there.

Q. And you stayed the night there?

A. No, not that time. I forget exactly when it was I stayed one night there.

Q. You don't recall that that was the episode that you stayed one night before you went to Phoenix at that establishment? That is the fact, is it not?

A. Yes, I am almost sure.

Mr. Stout: All right. I have no further questions.

Cross-Examination

By Mr. Hagerty:

Q. Miss Bell, you worked for about a year and a half at the California Physicians Service, is that right?

A. Yes, I did.

Q. You were 17 when you started there?

A. Yes.

Q. Then you worked for the Wall Street Journal?

A. Yes.

Q. And how long did you work for them, do you know?

A. Not too awfully long.

(Testimony of Constance Marie Bell.)

Q. Well, can you reduce that to weeks, [127] months? A. Well, about a month maybe.

Q. And you were a clerk there for that firm?

A. Clerk-typist.

Q. And then you went to work for Hastings department store, is that right? A. Yes.

Q. How long did you work there?

A. Maybe a month or more. I am not sure.

Q. From there you left to become a dancing girl, is that right? A. Yes.

Q. In the Burlesque Follies?

A. I didn't leave from there. I mean immediately. I think there was a little time in there when I was just looking for work and then I went to the Follies.

Q. About how long would you say?

A. Maybe a month or so. Maybe more. I don't know.

Q. When do you think that you went to work as a dancing girl for the Burlesque Follies?

A. Probably—I only worked there about a week and it was probably in August, the latter part of August or somewhere around August, some place like that; I am not sure.

Q. That's in 1953? A. Yes.

Q. Could it have been July? [128]

A. No, because I was in Fresno in July, I think.

Q. Could it have been September?

A. It could have been. It could have been, I guess.

(Testimony of Constance Marie Bell.)

Q. It could have been September. You were married at this time, were you not?

A. No, I wasn't.

Q. When were you married?

A. In July of '54.

Q. In July of '54. You were not married at the time that you met Mr. Ege? A. No.

Q. And I believe you testified that Mr. Ege did not give you the telephone number to Mr. Boyd's place in Scottsdale; he gave it to Judy Berg, is that right?

A. He didn't—I can't say who—I can't say he gave it to her. But he didn't give it to me. I don't know how she got it. If I said that, I didn't mean it that way.

Q. You are certain he didn't give it to you?

A. Yes.

Q. And as a result, you never did have any telephone conversation—— A. No.

Q. ——with Mr. Boyd in Arizona?

A. No.

Q. I believe it is your testimony that when you arrived in [129] Arizona——

A. Pardon me?

Q. Just a minute. I will withdraw that. I said I believe it is your testimony, both on direct and cross-examination that when you arrived in Phoenix, Miss Berg made phone calls or various phone calls out of your presence, and subsequently you went to the home of a colored man and wife, I will say—— A. Yes.

(Testimony of Constance Marie Bell.)

Q. —and they drove you some place in Scottsdale, is that true? A. Yes.

Q. When you arrived there, you did not see Joe Boyd, did you? A. Not immediately, no.

Q. And you had never seen him before that, had you? A. No.

Q. But after your arrival there, a day or so or whatever it might have been, you did see him?

A. Yes.

Q. Can you tell us when it was you arrived at Scottsdale?

A. Some time in October or somewhere around—I don't remember when.

Q. Could it have been September?

A. No, I don't really know.

Q. You don't really know? [130]

A. I mean I know but it was—What are you trying to tell me? I wasn't there or something? I know where I have been, but I can't remember.

Q. Well, you have testified before the grand jury in this thing, haven't you? A. Yes.

Q. And you told them?

A. And I said somewheres around—I can't pinpoint a date or a time.

Q. Well, didn't you tell the grand jury that you had made a phone to Joe Boyd in Arizona?

A. No, I don't think I did.

Q. On the 22nd of October?

A. I told them on the 22nd?

Q. To the grand jury. Didn't you tell them that?

A. On the 22nd of October I made a call?

(Testimony of Constance Marie Bell.)

Q. To Joe Boyd in Arizona.

A. Oh, that's wrong because I couldn't say the 22nd of October of nothing.

Q. And you never made any phone call actually to Joe Boyd, did you? A. No.

Q. Your answer is no? You are shaking your head. A. "No."

Q. You have said that you were a week, ten days, two weeks [131] in Scottsdale, is that true?

A. I was there more than a week or—Between a week and two weeks, I am sure. Maybe a week or ten days, I can't remember.

Q. Are you sure of that?

A. Well, I know I was there and I worked a couple of days. I was sick a couple of days. I went to a doctor there. I went back to work and I left.

Q. Now, is it possible—could it be possible that you were there less than 48 hours?

A. Oh, no, definitely not.

Q. That is less than two days?

A. (Witness shakes head in negative.)

Q. That's utterly impossible?

A. Well, I know it is.

Q. Do you know the name of this colored couple that drove you from Phoenix to Scottsdale?

A. No, I don't.

Q. You don't know their names or anything?

A. (Witness shakes head in negative.)

Q. Do you know what kind of a car they drove?

A. No.

Q. Do you know the color of the house that they

(Testimony of Constance Marie Bell.)

took you to in Scottsdale? A. No. [132]

Q. Your memory is pretty hazy about this whole thing, isn't it?

A. It's not that I am—that it's hazy. I have just tried to forget for so long that—two years is a long time for anybody to remember anything.

Q. Yes, I understand that. It is difficult. Tell me, when you were subpoenaed to appear in this case, the subpoena was served upon you here in this City and County of San Francisco, is that true?

A. This time here?

Q. Yes, to come here to court. A. Yes.

Q. Where were you when it was served on you?

Mr. Sparrow: I will object to the question as irrelevant, incompetent, immaterial, if your Honor please.

The Court: Overruled.

A. Do I answer?

Q. (By Mr. Hagerty): Yes.

A. I was down on Ivy Street.

Q. That's at the Women's Detention Home, isn't it?

A. No. Well, it may be a detention home, but I wasn't in there. I had to go see a Miss Connelly there.

Q. And that is Miss Connelly of the San Francisco Probation Office? A. Yes. [133]

Q. Who is with you here in court (indicating)?

A. Yes. I used to be on probation, but I'm not no more.

(Testimony of Constance Marie Bell.)

Q. Oh, I see. She is a friend of yours?

A. Yes.

Mr. Hagerty: Thank you. No further questions.

The Court: Mr. Campbell or Mr. McMillan?

Mr. Campbell: Yes, your Honor.

Cross-Examination

By Mr. Campbell:

Q. Now, Miss Bell, I would like, if possible, to establish at least an approximation of the dates upon which some of the events that you have described allegedly occurred. As I understand it, however, you do not have any particular days or the month in mind, is that correct? A. Yes, sir.

Q. You did, however, place the time of year coming back from Las Vegas as being at Christmas time in 1953? A. Yes.

Q. Is that correct? A. Yes.

Q. And so that the time as to that, was that before, after or on Christmas that you returned from Las Vegas?

A. It was before Christmas, a day—not a day, maybe a few days.

Q. It could have been one or two days before Christmas, is that right? [134] A. Yes.

Q. And you are fairly certain as to that date, as to that time? A. I can't be too sure.

Q. Well, you are sure in your mind, are you not, that it occurred shortly before Christmas?

A. Yes.

(Testimony of Constance Marie Bell.)

Q. So that as to that occasion, and fixing it by Christmas, you have an approximation of a date. Now let us turn to another matter, and that is with reference to the period of time which you state you were at Delano, California, and I take it that you have no definite date in mind; is that correct, by day or the week or day of the month? A. No.

Q. That you were there? A. No.

Q. Is that right?

A. (Witness shakes head in negative.)

Q. You have to speak. The reporter cannot get the nod of the head. A. No.

Q. Do you recall or do you know the fact to be that on or about September 29, 1953, the police of the town of Delano closed all houses of prostitution?

A. When? [135]

Q. On September 29, 1953.

A. No, I don't know if they did or not.

Q. Do you recall the event or did you learn of the event of all houses of prostitution in Delano being closed?

A. I knew that they were closed because when we went through Delano going to Phoenix they were all closed.

Q. And did you visit or attempt to visit them at that time?

A. No, I didn't go to any of them.

Q. That is information which someone else gave you, is that correct? A. Yes, somebody.

Q. And is it true that at the time that you went or allegedly went to Delano and worked in this

(Testimony of Constance Marie Bell.)

house that other houses of prostitution were also operating? A. Yes, I was told.

Q. I believe you stated something to the effect that your friend, Cindy, at least——

A. No, I am Cindy.

Q. Pardon—that your friend, Judy, at least for a part of the time that you were there, was working in another establishment, is that correct?

A. Yes.

Q. So that, to your knowledge, more than the one establishment that you were in was in operation? A. Yes. [136]

Q. Can you be positive as to whether the time that you allege you were in Delano working in this house was in September or in October or in November?

A. It must have been in October or November.

Q. What date or event—by what date or event do you place your statement that it was in October?

A. Well, I knew that I was in Phoenix some time in October.

Q. And how do you place that you were in Phoenix some time in October?

A. Well, I just know that it was. I mean, I don't—it was some time in October.

Q. How do you arrive at that conclusion, Miss Bell?

Mr. Sparrow: If your Honor please, I will object to the question as having been asked and answered.

The Court: That was your best recollection that it was?

(Testimony of Constance Marie Bell.)

A. Yes.

Mr. Sparrow: She stated that was her best recollection.

The Court: Sustained.

Q. (By Mr. Campbell): Can you state any event which places the times at which you were in any of the places that you have described?

Mr. Sparrow: I will object upon the grounds, if your Honor please, the question is compound, complex, and does not pinpoint—

The Court: Do you have the question in mind, Miss Bell? [137]

A. Yes, if there is anything that I can—anything that has happened that I can pinpoint down these dates.

Q. (By Mr. Campbell): Yes.

A. I can't. I mean, I just know that from when I got in and when I was out. That's the only thing.

Q. Well, is there anything you can point to by which we can arrive at any day of the month with relation to any of the events that you have described?

Mr. Sparrow: Object to the question as having been asked and answered.

The Court: Let her answer it again, if she can. Just give us your best recollection.

A. Would you repeat the question?

Q. (By Mr. Campbell): I will reframe it. I am trying to find any event, whether it is a birthday that you remember, yours or someone else's, a holiday such as Thanksgiving or Labor Day, or any

(Testimony of Constance Marie Bell.)

other event from which we can relate or place the events which you have described here, Miss Bell. Do you have any such date in mind or event in mind occurring in this period from which we can relate back these other events?

A. Well, one thing, my sister's birthday is in September.

Q. What date in September? A. The 15th.

Q. And did you observe her birthday that year? Is it your [138] custom to observe her birthday each year?

A. Well, I always send her a card or something.

Q. Yes. All right. Now, you say September 15.

A. (Witness nods head affirmatively.)

Q. Was it before or after your sister's birthday that you went to Phoenix, Arizona?

A. It was after her birthday.

Q. And how long after?

A. I don't know. I mean, it was about—well, I knew it must have been around the first of September that I got into this racket because her birthday was the 15th, and I had already—I knew I had already been to Folsom, I am sure.

Q. Well, now, let me ask you this: Could it have been as much as a month after your sister's birthday that you went to Phoenix?

A. I don't think so. No.

Q. It was less than a month?

A. It must have been.

Q. So that it could have been within the month of September that you went to Phoenix?

(Testimony of Constance Marie Bell.)

A. It could have been the latter part of September, the first of October; I don't remember.

Q. That is your best recollection at this time?

A. That is my best.

Q. You testified, I believe, that when you—on your return [139] from Arizona and as you passed through Los Angeles, you called a telephone number which had been given to you by Mr. Ege, is that correct?

A. Yes.

Q. And do you recall that telephone number?

A. No.

Q. Had you written it down at the time?

A. Yes.

Q. Did you save the slip of paper on which it was written?

A. No.

Q. Do you recall what town it was that you called?

A. I am pretty sure it was Delano that I called.

Q. That is your best recollection?

A. Yes.

Q. And do you recall from where you placed the call in Los Angeles?

A. From the airport there.

Q. And when you placed the call, did a man or a woman answer at the other end?

A. I can't remember.

Q. Do you recall a conversation which you had at that time?

A. Just that I was—what time I was, my flight, would get into Bakersfield. But I don't know who I talked to, if I talked to a woman or a man. [140]

(Testimony of Constance Marie Bell.)

Q. What did you say? Did you simply say—or did you identify yourself?

A. Yes, I said, "This is Cindy."

Q. "This is Cindy"?

A. (Witness nods head affirmatively.)

Q. And what did the person at the other end say?

A. I can't remember.

Q. Then you say you said, "My flight will get into Bakersfield at such and such a time"?

A. Yes.

Q. Is that right? A. Yes.

Q. Do you recall what time of day it was that you made this call?

A. I think it was in the evening, about 7:00 o'clock or so, I am not sure.

Q. And what time did your flight get into Bakersfield? A. I do not remember. I forget.

Q. Was it before or after midnight?

A. It was before midnight.

Q. All right. And who was it you say met you at the airport? A. Joe Bruno.

Q. Joe Bruno?

A. (Witness nods head in affirmative.) [141]

Q. Had you ever met him before? A. No.

Q. How did you identify yourself?

A. I forget. I had a black outfit on, suit.

Q. Did you in your previous telephone conversation tell whoever was on the phone how you were dressed?

A. I may have. Yes, I suppose I did.

Q. All right. Are you acquainted, Miss Bell, with

(Testimony of Constance Marie Bell.)

a man by the name of Ben Bruno? A. No.

Q. You have never heard of anyone by that name? A. No, I don't think so.

Q. Do you know a girl by the name of Jean in Bakersfield? A. Jean?

Q. Jean. A. No.

Q. Or Jean Longo? A. I don't think so.

Q. You do not recall? A. No.

Q. As I understand your testimony, you say that Joe Bruno then drove you to Delano?

A. Yes.

Q. Is that correct? A. Yes. [142]

Q. Where you remained for a week or two weeks, is that right? A. Something like that, yes.

Q. And I understood from your testimony that you understood that to be Kitty's house where you worked? A. Yes.

Q. And I understood also your testimony to be that Kitty was not there when you arrived but that she was ill? A. Yes.

Q. Do you know or were you advised as to whether she was in the hospital?

A. No, I don't think so.

Q. Did she return while you were there?

A. No.

Q. Did you ever talk with her by telephone at that time during the period of time you were there?

A. I don't think so, no.

Q. Who was it that was in charge of the house while you were there?

A. A girl named Bobby.

(Testimony of Constance Marie Bell.)

Q. What was her last name?

A. I don't know.

Q. You are sure her name was Bobby?

A. I am almost sure, yes. I am pretty sure.

Q. Did you live there at this establishment while you were [143] there?

A. Yes. And she was noted to me as Bobby. She may have had another name, I don't know.

Q. Did you live there while you were there in Delano? A. Yes.

Q. What was the street address of this place?

A. I don't know.

Q. Where was it located?

A. It was some place on—I know it wasn't downtown. It was more, I guess, on the wrong side of the tracks.

Q. Well, Delano is quite a small town, is it not?

A. I am pretty sure it is, yes.

Q. The town has about a 3,000 population, would you say?

A. I don't know. Once you get into those houses, you don't get out until your time is up.

Q. You don't walk around the streets?

A. No, definitely not.

Q. Well, now, what house was your friend, Judy, in when she was down there?

A. I don't know.

Q. Now, you said, I believe, that during this period of time—and I take it you are not sure whether it was September or October, is that right?

A. I am sure it was in October some time.

(Testimony of Constance Marie Bell.)

Q. Well, can you tell me if it was the early or latter part [144] of the month?

A. It must have been after the first two weeks of October, I would say.

Q. After the first two weeks?

A. I'm almost sure, yes.

Q. So you would place it, then, some time after the——

A. Maybe—after the 15th or the first week after, I don't know.

Q. I didn't get the latter part of your answer. You said after the 15th or——

A. Maybe later than that.

Q. Well, could it have been after the first of November?

A. No, it wasn't after that, I'm positive.

Q. Well, let's say, then, some time after the 15th of October? A. Yes.

Q. And you were there about two weeks?

A. Yes.

Q. How often was it that you saw Joe Bruno during that time?

A. Well, he was there quite often; almost every night except one time I think that he left and wasn't back for a couple of days or so, I don't know.

Q. Otherwise he was, aside from that, for a period of two weeks he was there every night?

A. Well, I mean he was there in the evenings, but I don't [145] think he was there in the daytime or not.

Q. Did you ever pay any money to him?

(Testimony of Constance Marie Bell.)

A. I never gave him any money directly.

Q. Did he ever give you any money?

A. No.

Q. No money transactions between you and Joe Bruno?

A. Not directly, no.

Q. That is what I am asking you: What directly took place, that you saw; not what you surmised, what you saw.

A. No.

Q. Who handled the money?

A. It was put in a little drawer, like—with little tills in it, and at the end of the evening it was all taken out by Bobby and they counted it.

Q. And they would then give you your share?

A. Yes.

The Court: Who is they?

A. Between Joe and Bobby, they would be right there counting it.

Q. (By Mr. Campbell): I understood you to say that Joe never handled the money.

A. Well, I can't say. You asked me if I directly gave him any money and I said no, I didn't directly.

Q. Had he directly given you any money?

A. No. [146]

Q. I understood it was Bobby who gave you the money, is that right?

A. Yes.

Q. And you settled up with her?

A. She is the one that—between her and him, they did the distributing, I mean—and she handed it to me most of the times. I can't—

Q. I see. Did you see what happened to the money that was left there after money was given to

(Testimony of Constance Marie Bell.)

you? A. No, I don't think so.

Q. After you got your share do you know what happened to the other money?

A. No, I don't know what happened to it.

Q. All right. Now, what was the occasion of your leaving there, Miss Bell?

A. Pardon? I was sick.

Q. There was no difficulty of any kind at that time, I take it? I mean, it was a question simply of your illness and you left, is that correct?

A. Yes.

Q. And it was on that occasion you went over to Fresno? A. Yes.

Q. Have you any way of fixing the time that you arrived in Fresno? A. No. [147]

Q. You have no——

A. You mean in the evening or daytime, you mean?

Q. No, the day of the month. A. No.

Q. Or with relation to, let us say, Thanksgiving Day, which would be, if you were in Delano the latter part of October, that would be the next holiday coming up. Can you fix it with relation to Thanksgiving Day? A. No.

Q. Can you fix it as before or after Thanksgiving Day?

A. I would say it was before Thanksgiving Day.

Q. And how long before?

A. I don't recollect.

Q. A matter of a week or two weeks? Can you fix it that way? A. I don't recollect.

(Testimony of Constance Marie Bell.)

Q. You can just say it was before Thanksgiving Day? A. Yes.

Q. All right. Now, you passed through Delano once more, you testified, on your way to Arizona, and I believe you testified that you met someone there on that occasion. Was that Joe Bruno?

A. No.

Q. Do you recall the name of the person you met?

A. He was just an older man. He didn't have nothing to do with the business. I think he ran the drugstore there. [148]

Q. He was the owner of the drugstore there?

A. Yes.

Q. And that was just a few minutes' stop, I take it?

A. Well, we went over to his house and had a drink, too.

Q. Was it from him that you learned that the houses were not operating?

A. I guess maybe that's where I heard it.

Q. From him? A. I don't know.

Q. So that you did learn on your way to Arizona that the houses were not operating? A. Yes.

Q. After you arrived in Arizona and you received this telephone call from Ege, you say he told you that Delano was open? A. Yes.

Q. What did he say in that connection?

A. The town—I don't know if they were what they call sneaking or not, I forget, or if it opened up fully, I don't know.

(Testimony of Constance Marie Bell.)

Q. What do you mean by sneaking?

A. Well, sometimes they have—they are—this is what I have been told. I don't know if it is the truth or not—that the public demands that those places open up down there.

Q. The public what? [149]

A. I don't know.

Q. Well, you have something in your mind when you say, "sneaking." What does it mean to you?

A. Well, they don't open up the doors wide and let everybody come in like they usually do. They just kind of—are very quiet about it.

Q. I take it that you mean then that that is an operation of the house when the public authorities have ordered the places closed——

A. Yes.

Q. ——and you are operating contrary, without—ostensibly without the knowledge of the authorities?

A. Uh-huh.

Q. And was that what you were doing in Delano?

A. I don't know. I can't remember if they were or not.

Q. I see. As far as you can recall now, it may or may not have been what you called sneaking?

A. Well, I don't think it was because there was too many people there, now that I think of it. But it could have been.

The Court: Let us take the morning recess.

(Recess.) [150]

Q. (By Mr. Campbell): On your trip with Judy to Arizona you testified about stopping in Delano

(Testimony of Constance Marie Bell.)

and speaking to the owner of the drugstore, where you were advised that Delano houses of prostitution were closed. Now, after you left Delano, did you not stop overnight in Bakersfield?

A. No, we didn't.

Q. You did not stop overnight anywhere on your way? A. No.

Q. Did you, however, stop the car for a brief time in Bakersfield?

A. I am sure—it might have been on the outskirts of Bakersfield—we ate some place there.

Q. Did you and Judy talk to anyone there in Bakersfield? A. No, I don't think so.

Q. Well, didn't you make inquiries on your way to Arizona on that occasion in Bakersfield as to whether or not there were any opportunities to work as a prostitute in Bakersfield?

A. I didn't. I don't know if she did.

Q. Do you recall if Judy did?

A. I don't know.

Q. Well, did she tell you anything about that?

A. No.

Q. Don't you recall learning as you arrived in Bakersfield that Bakersfield also was closed? [151]

A. I don't think so because I don't even know if they had any places in Bakersfield.

Q. As I understand you, then, you drove directly—strike that. As I understand you, you drove all the way from San Francisco to Phoenix, Arizona, without stopping anywhere overnight?

A. No, we didn't stop no place.

(Testimony of Constance Marie Bell.)

Q. Or did you stop anywhere to sleep or to rest?

A. No.

Q. You just made the usual gasoline-meal-rest stops, is that correct?

A. Rest stops? You mean to have coffee and stuff?

Q. Yes. A. Yes.

Q. And after you arrived in Phoenix, as I understand you, Judy did the telephoning?

A. She called a number, yes.

Q. She called some number as a result of which you got in touch with this maid and her husband, is that right? A. Yes.

Q. And you are very certain that you did not do that telephoning? A. I am certain, yes.

Q. Did you testify before the grand jury that you had done the telephone calling to Mr. [152] Boyd? A. No.

Q. You did not?

A. (Witness shakes head in negative.)

Q. So that when it states in the indictment as overt act six, "that Constance Marie Bell in the State of Arizona had a telephone conversation with Joseph Boyd," that was not your testimony before the grand jury?

Mr. Sparrow: I will object to the question as calling for the opinion and conclusion of the witness, if your Honor please.

The Court: Overruled.

A. I don't remember. I don't think I did.

Q. (By Mr. Campbell): You don't remember

(Testimony of Constance Marie Bell.)

testifying to that? A. I don't think I did.

Q. All right. Calling your attention to the language of the indictment, "that at 395 Monterey Boulevard in the City and County of San Francisco the defendant, Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd to Constance Marie Bell," I understand that is not the fact, is it?

A. Would you repeat that again? I don't quite understand it.

Q. The indictment alleges that the defendant Ege in San Francisco gave you the telephone number of Mr. Boyd. Now, that is not correct, is it? As I understand your testimony, [153] he gave that telephone number to Judy?

A. Yes. He didn't—I didn't say he gave it to Judy.

Q. Whom did he give it to?

A. I didn't say he gave it to nobody.

Q. Did he give it to you? A. No.

Q. So that the indictment as returned by the grand jury is not correct in that regard, that he gave it to you?

A. I am talking for myself. He didn't give it to me.

Q. All right. Did you testify before the grand jury that he did give the number to you?

A. I don't know.

Q. You don't remember what you testified to, is that right? A. I don't remember.

Q. You don't remember. All right. Now, in the

(Testimony of Constance Marie Bell.)

indictment it is alleged as overt act seven that, "The defendant Joseph Boyd drove (you in an automobile) Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona." As I understand your testimony, you were in fact driven there—by your present testimony—that you were driven there by the husband of the colored maid, is that correct? A. Yes.

Q. And you were not driven there by Mr. Boyd?

A. No.

Q. Did you testify before the grand jury that you were [154] driven there by Mr. Boyd?

A. No, I don't think so.

Q. Did you not so testify?

A. I don't think so, no.

Q. Or do you recall what testimony you gave before the grand jury?

A. I recall what I gave before the grand jury, but, I mean, I can't remember everything.

Q. But the fact as you now state it is that you were driven there by the husband of the colored maid, is that right? A. Yes.

Q. All right. Now, you have testified here that after you worked in Delano you went to Fresno to your sister's home and that there Ege came and picked you up and returned you to San Francisco, is that correct? A. Yes.

Q. And you testified, I believe, that in Fresno when he picked you up you gave him what remained, after you had made certain expenditures yourself, of your earnings which you had obtained in Arizona

(Testimony of Constance Marie Bell.)

and at Delano, is that right? A. Yes.

Q. And you gave them to him there at Fresno, is that right? A. Yes.

Q. It is alleged in the indictment as overt act No. 10, "that in the City and County of San Francisco in October, 1953, [155] the defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell." As I understand your present testimony, that actually took place in Fresno, is that right?

A. Well, I can't exactly remember where. I mean, so many different places that I gave money, that I don't recollect exactly where I gave any money any more.

Q. Where did you give him the money that you say you earned in Delano and Arizona?

A. It was either in—when he picked me up or in San Francisco.

Q. So it may not have been Fresno, as you testified in this courtroom?

A. It most likely was, but it could have been—

Q. What is your present best recollection?

A. My present best recollection is Fresno, I am sure.

Q. And not San Francisco?

A. I don't know. I don't think so.

Q. Did you testify before the grand jury that it was in San Francisco and in this jurisdiction?

A. I don't think so, no.

Q. All right. Do you recall? A. No.

Q. All right. Now, you testified here, as I recall

(Testimony of Constance Marie Bell.)

your testimony, that in November of 1953 or December, you were [156] not sure of the date, that you were driven to Barstow by certain people whose names you did not recall, with the exception of the first name of one girl, is that correct?

A. Yes.

Q. And that Ege did not accompany you on that trip, is that correct?

A. No.

The Court: The answer was "no"?

A. "No." I am sorry.

Q. (By Mr. Campbell): In the indictment in overt act 12 it is alleged that "in November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco to the City of Barstow." Did you so testify before the grand jury, that is, that Mr. Ege drove you on this occasion?

A. No, I don't think—I don't——

Q. You have no recollection?

A. I know that he didn't.

Q. And the fact is that he did not?

The Court: Just a moment, Mr. Campbell. I didn't get the last part of your answer. "I know that"—what?

A. I know that he didn't. I am sure I didn't testify to that.

Q. (By Mr. Campbell): Was that "didn't"—n-t?

The Court: That is what I understood. Is that right, [157] Mr. Reporter?

The Reporter: Yes.

(Testimony of Constance Marie Bell.)

Q. (By Mr. Campbell): You know that he didn't? A. Yes.

Q. You testified here, as I understood you, that some time after your arrival in Barstow and while you were working there that the defendant Ege on his way to, you said Las Vegas, stopped by Barstow, is that right? A. Uh-huh.

Q. And you gave him approximately \$200 on that occasion, is that right?

A. About one hundred or two hundred, I don't know.

Q. One or two hundred?

A. (Witness nods head affirmatively.)

Q. Was that the only occasion on which you gave him money in Barstow? A. Yes.

Q. That's the only time? A. Yes.

Q. And that's the only amount that you ever gave him, is that right? A. In Barstow, yes.

Q. All right. In the indictment as overt act 13 it is alleged "in November, 1953, in the City of Barstow defendant Edward Raymond Ege took the sum of approximately \$900 from [158] Constance Marie Bell." Did you so testify before the grand jury?

A. I don't think so. I don't know.

Q. That is not the fact, is it, that the defendant Ege took \$900 from you in the City of Barstow?

A. Well, I had more money than what—I may have testified that I had more money but I didn't give it all to him.

Q. Well, you had \$900, is that what I understood?

(Testimony of Constance Marie Bell.)

A. I had more than what I gave to him. I don't know whether I had 900.

Q. But you only gave him one or two hundred, is that right? A. I think so, yes.

Q. And that's all he took from you at that time, is that right? A. Yes.

Q. So that he did not take \$900 from you as alleged there? A. But I had it with me.

Q. I know, but he did not take it from you, isn't that right?

A. (Witness nods in affirmative.)

Q. Did you testify before the grand jury that he took \$900 from you? A. I don't think so.

The Court: Did I understand you to say that you gave him a hundred dollars? [159]

A. Oh, no, I gave him between one and two hundred. I don't know what the exact amount was.

The Court: Between one and two hundred dollars?

A. Yes.

The Court: That was in Barstow?

A. Uh-huh.

The Court: Pardon me, Mr. Campbell.

Mr. Campbell: Shall I go ahead?

The Court: Yes.

Q. (By Mr. Campbell): Miss Bell, it is alleged in the indictment that the occasion upon which you gave the money—whatever sum it was—to Ege occurred in November of 1953. Did you so testify before the grand jury? A. I don't know.

Q. You don't recall?

(Testimony of Constance Marie Bell.)

A. In November, I guess it was in November, but I——

Q. You think it was in November?

A. Uh-huh.

Q. Now, by a bill of particulars furnished by the United States Attorney, it is set forth that the \$900 referred to was taken by Mr. Ege on or about December 20, 1953. Does that date in any way refresh your recollection as to when this event allegedly took place? A. No, it doesn't.

Q. Did you at any time supply to either the United States [160] Attorney or to any of the government investigators or other people that you may have talked to concerning this case with the date of December 20 or around or about that date as being the occasion upon which these events in Barstow took place? A. I don't recollect.

Q. All right. In the indictment it is alleged that it was in the month of November that Ege drove you to Barstow. You have already testified that he did not drive you. But was the occasion upon which these other people drove you to Barstow in the month of November, 1953?

A. I presume it was; I am not sure.

Q. You are not sure. What is your best recollection? A. It was November. In November.

Q. What is your best recollection?

A. Oh, you people ask me: November, October, September. I don't know any more than I have already told you once.

Q. I understand——

(Testimony of Constance Marie Bell.)

A. I have said it once—I have said it a hundred times. I don't know. I don't recollect.

Q. You do not recollect? A. No.

Q. Is that right?

A. Gee, you have asked me a hundred times already.

Q. Now, Miss Bell, in the bill of particulars furnished [161] by the United States Attorney the event of your being driven to Barstow is placed on or about December 7, 1953. Did you supply that date?

A. December 7th? I never supplied no 7th, no dates, I am almost positive; I don't recollect, but I am almost sure.

Q. And that date means nothing to you, I take it? A. No, it doesn't.

Q. All right. In the indictment it is alleged that in November, 1953, the defendant Ege drove you from San Francisco to the County of Yolo, State of California? A. In October?

Q. That is the allegation in the indictment. Would you recall if that was your testimony before the grand jury?

A. It may have. It may have.

Q. And so far as your present recollection is now, it may have been October?

A. It may have been. Probably, I——

Q. Now—I beg your pardon? A. Nothing.

Q. But in a bill of particulars furnished by the United States Attorney with reference to that allegation, which is overt act 11, it is alleged that that

(Testimony of Constance Marie Bell.)

act took place on or about November 10, 1953. Did you supply the date of November 10th to the United States Attorney?

A. I don't think so. If I had said any date, "may have" or [162] "I don't know," "Maybe the 10th," "Maybe the 20th"—I don't remember even when I went to the grand jury any more, with your dates.

Q. I understand. The date November 10th means nothing to you?

A. I couldn't tell you what day today is; I am getting so tired of dates.

Q. But in any event that date means nothing to you? A. No.

Q. In the indictment I am referring to overt act 10, which refers to the \$700 allegedly taken from you by the defendant Ege and apparently referred to the same event which you have described, that you were not sure took place at Fresno or San Francisco, referring to the time after you were at Delano. In the indictment it is alleged that \$700 was taken from you in October of 1953. I presume that that was your testimony before the grand jury, is that correct? A. It may have.

Q. But in the bill of particulars furnished by the United States Attorney, that occasion is set forth as having occurred on or about November 5, 1953, rather than in the month of October. Does that particular date mean anything to you?

A. They don't mean nothing to me. I am getting so tired of them I don't even want to talk about them no more.

(Testimony of Constance Marie Bell.)

Q. Well, I understand, but the date means nothing to you? [163]

A. No date means nothing to me.

Q. And, I take it——

A. Two years ago I tried to put this all behind me. Now you have been digging and digging and digging at me and I can't take it.

The Court: You want to take a recess, Miss Bell?

A. I can't—I just can't go on no more. I can't.

The Court: Take a recess for a few minutes, ladies and gentlemen.

(Recess.) [164]

Mr. Campbell: Your Honor, in view of the differences appearing in the indictment, we would respectfully request that the transcript of this young woman's testimony before the Grand Jury be made available.

The Court: It will be so ordered.

Mr. Campbell: Thank you, sir.

In view of that situation and of the witness' present emotional state, then I will not continue the cross-examination at this time. I would like opportunity, however, after we have had an opportunity to examine that transcript, if the Court permits us to do so, have further cross-examination, if it appears warranted, but without covering the ground which has been covered heretofore.

The Court: Very well. May the witness be withdrawn at this time, Mr. Sparrow?

(Testimony of Constance Marie Bell.)

Mr. Sparrow: I just have one question on re-direct, if I may.

Redirect Examination

By Mr. Sparrow:

Q. Miss Bell, you stated yesterday in response to a question from Mr. Stout that you are now living alone in San Francisco. Will you explain that?

A. My husband is on a destroyer at sea.

Q. One more question, if I may. Through whom, Miss Bell, did you meet the person who ran that house at Atuma Street?

A. Through Eddie. [165]

Mr. Sparrow: That is all.

The Court: You may be excused temporarily, Miss Bell.

(Witness excused.)

The Court: Call your next witness.

GENE GIOMI

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name and your occupation to the Court and jury.

A. My name is Gene Giomi. I live at 475 Faxon Avenue, San Francisco.

Direct Examination

By Mr. Sparrow:

Q. Mr. Giomi, directing your attention to the spring of 1952, did you own the premises known as 395 Monterey Boulevard, San Francisco?

A. That's right.

Q. And at that time did you have occasion to rent the premises? A. We did.

Q. And to whom did you rent the premises at 395 Monterey?

Mr. Hagerty: Just a minute, objected to as too remote.

The Court: What time?

Mr. Sparrow: The spring of 1952.

The Court: Overruled.

Q. (By Mr. Sparrow): To whom did you rent the premises? [166]

A. Mr. and Mrs. Boyd.

Q. Do you remember his first name?

A. No, I don't.

Q. And do you know how long Mr. and Mrs. Boyd occupied those premises at 395 Monterey Boulevard?

(Testimony of Gene Giomi.)

A. I have some dates that I can give you, sir.
(Referring to memo.)

Mr. Campbell: Pardon me, if the Court please. May it be understood again that my objection is running to this testimony, subject to the motion to strike previously made?

The Court: You may have that understanding.

Mr. Stout: May the record so state with reference to our position?

The Court: The record will reflect that.

Do you have some dates, you say?

A. I have, sir. Let's see, approximately April 15th, 1952, to May 15, 1953——

Q. (By Mr. Sparrow): In connection with that latter date, May 15th——

Mr. Hagerty: I would like to object. He hasn't finished his answer, your Honor.

The Court: Correct. He hasn't finished his answer.

Mr. Sparrow: Sorry.

A. From April 15, 1952. And at that time Mr. Boyd introduced Mr. Ege and told me that he was going to leave the state and [167] that Mr. and Mrs. Ege would carry on his obligations, and so Mr. Ege occupied the premises from May 15, 1953, to January 29, 1954, at the time the place was sold. And that's all I can give you.

Q. (By Mr. Sparrow): And on or about May 15, 1953, you were introduced to Mr. Ege by Mr. Boyd, is that correct? A. That's correct.

Q. And do you recognize Mr. Boyd and Mr. Ege,

(Testimony of Gene Giomi.)

do you? A. That I do, sir.

Mr. Sparrow: No further questions.

Cross-Examination

By Mr. Stout:

Q. Mr. Giomi, you operate a market here in San Francisco, do you? A. Yes, sir.

Q. Is that market known as Gene's Foods?

A. That's right, sir.

Q. Gene's? G-e-n-e, apostrophe s?

A. That's right, sir.

Q. Is that located at 1630 Ocean Avenue in San Francisco?

A. Not any longer. We did operate that, but we—we sold that market. I am operating a market at 2545 Noriega Street, that's the only one.

Q. At the time in question, that is, in May, June and up to January, 1954, were you operating, however, at 1630 Ocean Avenue? Do you recall? [168]

Mr. Sparrow: If your Honor please, I will object to the question as irrelevant, incompetent and immaterial.

The Court: What is the purpose of this?

Mr. Stout: Well, your Honor, it is just a question of the presence of the defendant during the periods relative to the indictment. We will show by cancelled checks that payments were made to this witness by the defendant on certain dates.

The Court: All right. Go ahead.

Mr. Stout: Is that approximately your best recollection, sir?

(Testimony of Gene Giomi.)

A. Yes, that's right. We did operate at 1630 Ocean Avenue as well as the rest of them.

(Discussion between counsel.)

Mr. Stout: I show you, Mr. Giomi, four checks, and I shall ask you to examine them, if you will.

Does your Honor wish to see them before I address them to the witness?

The Court: No.

(Witness examining.)

Q. (By Mr. Stout): Do you recognize those, sir? A. Yes, sir.

Q. Are those the checks used by the defendant Ege to pay you the monthly rent on the premises at 395 Monterey Boulevard, San Francisco? [169]

A. That's right.

Mr. Stout: May I offer them as one exhibit on behalf of the defendant, Ege?

Mr. Sparrow: If your Honor please, I don't see the relevancy of these. I will object to them on that ground.

The Court: Are the dates of any importance?

Mr. Stout: I will read the dates to the Court. The date September 22, 1953; the date October 29, 1953; the date November 20th, 1953; and the date December 29, 1953. We are unable to show continuity at this time; we will do so later, so far as the dates of the overt acts are concerned.

The Court: If you want to put them in evidence, why, I will receive them.

(Testimony of Gene Giomi.)

Mr. Stout: I would ask at this time that they be received and marked at this time.

The Court: They will be received and marked Defendant Ege's next exhibit in evidence.

The Clerk: Defendant's Exhibit A introduced in evidence.

(A group of cancelled checks received in evidence and marked Defendant Ege's A in evidence.)

Mr. Stout: May they be passed to the jury?

The Court: Not at this time.

Q. (By Mr. Stout): Were those checks handed to you personally by Mr. Ege, Mr. Giomi?

A. They could have been mailed in. [170]

Q. Do you have any recollection that any were mailed in to you? A. Oh, yes.

Q. Which ones, can you tell us?

A. No, I can't. They may have been mailed in or they could have been handed to us, because we have an office staff and they take care of it.

Q. These checks could come in and be handed to you subsequently? A. That's right.

Q. Is that correct? A. Yes.

Q. Directing your particular attention to the check in December, 1953, the one that is dated on the 29th of December, do you have any specific recollection of that check?

A. No, I don't know, I wouldn't have one.

Q. Is it possible that Mr. Ege on that date handed you that check in person?

(Testimony of Gene Giomi.)

A. It is possible, yes.

Q. Is it likewise not possible that the check on September 22, 1953, could have been handed to you?

A. They could all have been handed to me, for that matter. They could have been handed or mailed or however we got them.

Q. In other words, if I were to go over each individual check with you and ask you that same question, is it possible [171] it could have been handed to you, your answer would be that it was possible?

A. That's right, that's right, it is.

Mr. Stout: Thank you, Mr. Giomi. No further cross-examination.

Cross-Examination

By Mr. Hagerty:

Q. I have only one question, Mr. Giomi. Was the tenancy of Mr. Boyd from your records April 15, 1952——

A. Approximately.

Q. ——to May 15, 1953?

A. We have the termination date. We don't have the starting date, but it was approximately that time. I believe the termination date was——

Q. May 15, 1953?

A. Yes. Yes, that's right.

Q. At that time Mr. Ege took over the lease?

A. That's right.

Mr. Hagerty: Thank you, very much, Mr. Giomi.

Mr. Campbell: I have no questions.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness. [172]

J. W. ELLINGSON

called as a witness on behalf of the Government,
sworn.

The Clerk: Will you please state your name and
your occupation to the Court and to the jury?

A. J. W. Ellingson.

Direct Examination

By Mr. Sparrow:

Q. Mr. Ellingson, where do you live?

A. Post office address is Peoria, Arizona. The
residence is about three miles north of Litchfield
Park.

Q. Now, directing your attention to October,
1953, did you own a house in or approximately in
the city of Scottsdale, Arizona? A. I did.

Q. And could you tell us where that house was
located with reference to the town of Scottsdale?

A. It was located three miles north of Scottsdale
on Scottsdale, and half a mile east of Scottsdale
Road.

Q. Did you have occasion on or about the 1st of
October that year to rent that house to anyone?

A. I did, on the afternoon of October 6, 1953.

Q. And to whom did you rent those premises?

Mr. Stout: Excuse me. Your Honor, may we
have the continuous objection noted that this is
hearsay with reference to the defendant Ege?

The Court: The record will show that. [173]

(Testimony of J. W. Ellingson.)

Mr. Campbell: And the same objection as to the defendant Bruno.

The Court: The record will show that also.

Q. (By Mr. Sparrow): To whom did you rent those premises, Mr. Ellingson?

A. Mr. Boyd, J. B. Boyd.

Q. And what were the terms of the lease?

A. It was for the tenure of one year with the first and last month's rent payable in advance.

Q. And were you paid in advance?

A. I was, on the evening of October 6th.

Q. And how much were you paid?

A. \$300.

Q. So the rent was \$150 a month, is that right?

A. That's correct.

Q. And by whom were you paid that money?

A. By Mr. Boyd.

Q. And you recognize him in the courtroom today, do you? A. Yes, sir.

Q. How long did Mr. Boyd occupy those premises?

A. As far as I know, I met him the next morning on October 7th at his motel, which was the El Rancho on West Van Buren, according to his date of meeting, possibly around 10:00 o'clock.

Q. Did you have occasion at that time to discuss with him what the nature of his employment, if any, was? [174] A. His employment?

Q. Yes.

A. Well, on the evening of October 6th he was there in company with his wife, to whom he introduced me as his wife, and he indicated to me or

(Testimony of J. W. Ellingson.)

told me that he had been in the jewelry business in San Francisco and was looking into establishing a jewelry business in Scottsdale.

Q. Do you recall approximately when the Boyds ceased to occupy that house?

A. Well, it was his privilege to occupy it on October 7th. What date he occupied it, I do not know, because my residence is 30 miles from that house that he rented.

Q. Do you know how long they stayed in the premises after——

A. Well, I understand from the neighbors that they moved out about——

Mr. Hagerty: Object to this as being hearsay.

The Court: Sustained.

Q. (By Mr. Sparrow): Do you know of your own knowledge about when he moved out of the house, if he did, short of that year?

A. About October 20th.

Q. Did you during that period, from October 6th to October 20th, have occasion to receive any complaints concerning the use of the premises?

Mr. Hagerty: I will object to this, your Honor, as calling for hearsay. [175]

The Court: Objection sustained.

Mr. Sparrow: No further questions.

Mr. Stout: I have no questions of the witness.

Mr. Hagerty: I have no cross-examination.

Mr. Campbell: I have no questions.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

GEORGE W. RATHJEN

called as a witness on behalf of the Government,
sworn.

The Clerk: Please state your name and your occupation to the Court and jury.

A. George W. Rathjen. I am assistant manager at the El Rancho Hotel, Phoenix, Arizona.

The Court: Hotel or Motel?

A. Motor Hotel.

Direct Examination

By Mr. Sparrow:

Q. Mr. Rathjen, were you so employed on or about the 20th of September, 1953? A. I was.

Q. And did you have occasion on that day to register a Mr. and Mrs. Boyd in the hotel?

A. On the afternoon of September 20th, 1953, I registered them, about 2:30 in the afternoon. [176]

Mr. Stout: May we have the record note the continuing objection to this witness' testimony on behalf of the defendant Ege?

The Court: The record may so show.

Mr. Campbell: Also on behalf of the defendant Bruno.

The Court: So ordered.

Mr. Stout: Now, Mr. Rathjen, how long did Mr. and Mrs. Boyd stay in the hotel?

A. They were registered there for one month. Checked out the 21st of October.

(Testimony of George W. Rathjen.)

Mr. Campbell: May I have that answer read?

The Court: "They were there for one month. Checked out the 21st of October."

Is that right?

A. That's right.

Q. (By Mr. Sparrow): In connection with registering guests at the hotel, is it one of your duties to maintain a record of the registration?

A. That is correct.

Q. And of what does such a record consist, can you describe it?

A. It is a weekly account card.

Q. And is it—— A. Registration card.

Q. Is it subdivided by days? [177]

A. Yes, sir.

Q. Within that week? A. That is true.

Q. What does it show on it?

A. It shows all the charges——

Mr. Hagerty: Now, I will object to this on the ground the card itself would be the best evidence of what it shows.

The Court: You are right.

Mr. Sparrow: All right.

Q. I show you, Mr. Rathjen, a set of cards, and ask you whether or not you can identify those?

A. These are hotel registration cards with the rooms, the charges for long distance calls, local calls, laundry or valet charges are placed on this card, are carried forward at the end of the day by the night man, and——

Q. Do those cards relate to a specific person?

(Testimony of George W. Rathjen.)

A. Yes, sir, they do.

Q. Whom do they relate to?

A. The party that is registered in this particular room.

Q. And who was that?

A. Mr. and Mrs. J. Boyd.

Mr. Hagerty: Your Honor, might I see them?
I haven't seen them at all.

(Counsel examining.)

Mr. Sparrow: Offer these in evidence, if your Honor [178] please.

The Court: They may be received in evidence as Government's exhibit next in order.

Mr. Campbell: Let it be subject to defendant Bruno's objection as to incompetency.

The Court: So ordered.

Mr. Stout: Same objection as to defendant Ege.

The Court: Likewise so understood.

The Clerk: Government's Exhibit No. 1 in evidence.

(Registration card, El Rancho Hotel, received in evidence and marked Government's Exhibit No. 1.)

Q. (By Mr. Sparrow): I believe you stated, Mr. Rathjen, that these cards, among other things, indicate long distance telephone calls made, is that correct? A. That is true.

Q. Do you remember of your own knowledge where the majority of long distance telephone calls made by Mr. and Mrs. J. Boyd were made to?

(Testimony of George W. Rathjen.)

A. The majority——

Mr. Hagerty: I will object to that, your Honor, as improper direct examination. I think the cards speak for themselves, if they are a record——

The Court: The objection will be overruled.

Mr. Hagerty: The witness should be interrogated on them.

The Court: Overruled. [179]

Mr. Hagerty: It calls for the opinion and conclusion of the witness, your Honor.

The Court: Also overruled.

A. The majority of the long distance calls are to San Francisco.

Q. (By Mr. Sparrow): Mr. Rathjen, where is the hotel located with reference to Scottsdale?

A. It is about 14 miles west of Scottsdale.

Q. Did you have any conversations with Mr. and Mrs. Boyd, that you recall?

A. I don't recall a conversation with Mrs. Boyd. I do recall having a conversation with Mr. Boyd.

Q. And do you recall the substance of those conversations?

Mr. Hagerty: I will object to this, your Honor, as the proper foundation hasn't been laid.

The Court: Overruled.

A. The conversation was about everyday subjects, about how hard he was working on his place in Scottsdale. I didn't know what the purpose for the place was or anything but——

Q. (By Mr. Sparrow): He told you he had a place in Scottsdale?

(Testimony of George W. Rathjen.)

A. He had located a nice home there.

Mr. Sparrow: No further questions.

Cross-Examination

By Mr. Stout:

Q. Did you yourself place these telephone calls to San Francisco? [180]

A. I placed some of these calls, not every one.

Q. Not every one? A. No, sir.

Q. Do you know to whom they were placed?

A. No, sir, I do not.

Q. Do you recall the numbers to whom they were placed? A. No, sir.

Mr. Stout: Thank you, sir.

Mr. Hagerty: I have no questions of this witness.

Mr. Campbell: No questions, your Honor.

The Court: You may be excused.

(Witness excused.)

The Court: Call your next witness.

CHARLES W. BRILEY

called as a witness on behalf of the Government,
sworn.

The Clerk: Please state your name and occupation to the Court and jury.

A. Charles W. Briley. I operate a bar and restaurant in Scottsdale, Arizona.

Direct Examination

By Mr. Sparrow:

Q. Directing your attention to the month of October, 1953, were you so employed at that time?

A. I was.

Q. What was the name of the bar that you were operating at [181] that time?

A. The Pink Pony.

Q. That is located where?

A. On the corner of Scottsdale and Main in Scottsdale, Arizona.

Q. On or about that time did you have occasion to meet the defendant Boyd at the Pink Pony?

A. I did.

Q. And who was present, if you recall, besides you and the defendant Boyd?

A. He and his wife. As I recall, other than just the other regular customers in the place, I was the only one.

Q. Can you remember about when that was?

A. As I recall, it was in the first week of October.

Q. 1953? A. Yes.

(Testimony of Charles W. Briley.)

Q. Did you have occasion to see the defendant Boyd after that? A. Yes, I did.

Q. When was that with reference to the first meeting? A. Oh, it was——

Q. If you recall.

A. I think it was every day or every other day, something like that.

Q. You had occasion to meet him every day or every other day [182] thereafter? A. Yes.

Q. For about how long a period of time thereafter, do you remember?

A. Well, I would say two weeks.

Q. On the occasion of your second meeting with the defendant Boyd, where was that?

A. It was also at the Pink Pony.

Q. And who else was present?

A. His wife.

Q. Did you have a discussion with the defendant Boyd on the occasion of that second meeting with reference to what he was doing in Scottsdale?

Mr. Stout: May the record show objection to this on behalf of the defendant Ege as hearsay?

The Court: The record will so show.

Mr. Campbell: And also on behalf of defendant Bruno.

The Court: The record will show that on behalf of this defendant Bruno, also.

A. He was interested in acquiring a residence in Scottsdale.

Q. (By Mr. Sparrow): In what?

A. In leasing a residence.

(Testimony of Charles W. Briley.)

Q. Did he tell you what he was going to do with that residence? A. Yes, he did. [183]

Q. And what did he say he was going to do?

A. He was going to operate a house of prostitution.

Q. Did he have any further discussion with you relative to the operation of that house of prostitution? Did he ask your assistance in any way?

A. He told me he was having a hard time financially and he said that if I could send him any business he would appreciate it.

Q. Now, do you recall any one of the occasions that you met Mr. Boyd in the Pink Pony, that you saw Boyd in the Pink Pony, that he was accompanied by anyone other than his wife?

A. No, I don't think I ever saw him with anyone else other than his wife.

Q. By what name was his wife introduced to you, if she was? A. Ginger.

Q. On any one of these occasions did the defendant Boyd state to you anything about where he was getting the girls who would staff his house of prostitution?

Mr. Hagerty: Of course this is leading and suggestive, your Honor.

The Court: It is slightly leading. Just tell us what was said.

A. I don't think he ever mentioned any particular town. I couldn't say any particular location was ever actually mentioned to me. [184]

Q. (By Mr. Sparrow): Did he ever mention

(Testimony of Charles W. Briley.)

that he was getting any girls or—— A. Yes.

Q. ——or where he was getting them and——

A. Yes.

Q. What did he say at that time, to the best of your recollection?

A. Well, as I recall, when they had first opened up their house, they had one girl, besides his wife, who was running the place, and they had one girl.

Q. Did he tell you that? A. Yes.

Q. Did you have any discussion with him relative to his adding to that—adding to the number of girls? A. Yes, I did.

Q. Would you state what he said, in substance, what he said to you with reference to that?

A. Well, there was two more girls supposed to show up.

Q. Did he state from where?

A. I can't——

Mr. Hagerty: I will object to that as asked and answered. He said before he didn't know where they were coming from.

The Court: Let him answer it again.

A. As I recall, they were coming from California, but I [185] couldn't say whether or not they were coming from San Francisco, I couldn't say.

Mr. Stout: Ask the latter part of the answer be stricken as speculative on the part of the witness, your Honor.

The Court: It may go out, the latter part.

Mr. Stout: And that your Honor likewise instruct the jury to disregard that.

(Testimony of Charles W. Briley.)

The Court: You will disregard the latter part of the answer which has been stricken from the record, ladies and gentlemen.

Mr. Sparrow: No further questions.

Mr. Stout: I have no questions of the witness.

Cross-Examination

By Mr. Hagerty:

Q. Can you tell us when, Mr. Briley, that you were introduced to the defendant Boyd's wife as Ginger?

A. Well, I was actually introduced to her under another name. As I recall, it was Izzy.

Q. You were never introduced to her as Ginger, were you?

A. I was never introduced to her as Ginger. I heard her called Ginger. I was never introduced to her as Ginger, no. I think at the time I was introduced to her I was introduced to her as Izzy.

Q. Are you testifying here as a free and voluntary witness? A. I am.

Q. Although you have had problems with the Federal Government [186] before, have you not?

A. I never have.

Mr. Sparrow: If your Honor please, I will object to the question as irrelevant, incompetent and immaterial.

The Court: He has already answered he never had.

(Testimony of Charles W. Briley.)

A. I have never had any trouble with anyone, any court.

Q. (By Mr. Hagerty): You were frequently out at this place? A. I have been, yes.

Q. In Scottsdale, weren't you? A. Yes.

Mr. Hagerty: No further questions.

Mr. Campbell: I have no questions.

Mr. Stout: I have no questions.

The Court: Step down.

(Witness excused.)

Mr. Sparrow: Shall we take the noon recess at this time?

The Court: Yes.

We will recess at this time, ladies and gentlemen, until 2:00 o'clock this afternoon. Please bear in mind the admonition of the Court not to discuss the case either among yourselves or with anyone else, do not form or express any opinion about it until it is finally submitted to you.

Two o'clock this afternoon.

(Whereupon an adjournment was taken until 2:00 p.m. this date.) [187]

September 27, 1955, 2:00 P.M.

GEORGE H. THOMAS, JR.

was called as a witness on behalf of the government, and being first duly sworn, testified as follows:

The Clerk: Will you state your name and occupation to the court and jury?

A. George H. Thomas, Jr.; safety engineer for Kennecott Copper Corporation, Hayden, Arizona.

Mr. Stout: I am sorry. I did not hear the description of your occupation.

The Witness: Safety engineer for Kennecott Copper Corporation, Hayden, Arizona.

Direct Examination

By Mr. Sparrow:

Q. Mr. Thomas, directing your attention to October, 1953, by whom were you employed at that time?

A. Precinct of Scottsdale as a constable, County of Maricopa, Deputy Sheriff, part time.

Q. At or about that time, did you have occasion to meet the defendant, Joseph Boyd? A. I did.

Q. Will you describe where it was that you met him?

A. Well, out on the desert, at the home belonging to Mr. Ellingson. [188]

Q. Did you have a discussion with him at that time? A. Yes, I did.

Q. What was the substance of it?

Mr. Stout: One moment. Objection, for the rec-

(Testimony of George H. Thomas, Jr.)

ord, on the ground that this is hearsay with reference to the defendant whom I represent.

The Court: The record will show that.

Mr. Campbell: Same objection.

The Court: The record will also show that.

The Witness: What was the substance of it, was the question?

Mr. Stout: Yes.

The Witness: So far as I remember, I remember it was changing fences so he could have horses——

Mr. Stout: I can't hear, if the Court please.

The Witness: So far as I remember, it was in regard to changing the fences around the place so he could have horses.

Q. (By Mr. Stout): Did you have any further discussion with him on that occasion?

A. I don't remember just exactly at that time.

Q. Did you have occasion to talk with him on more than one occasion? A. Yes, I did.

Q. Can you recall what, if any subjects you discussed on subsequent meetings? [189]

A. Oh, we discussed the fact that he was having quite a time financially. He had a lot of expenses, and along about the last time we talked, I think we discussed probable—remember, this is to the best of my memory—we probably discussed the fact that he was operating a house there.

Q. By a house, what do you mean?

A. House of prostitution. On the last conversation that I had with him, which was in the town of Scottsdale, he told me, well, "we are leaving,"

(Testimony of George H. Thomas, Jr.)

and I said, "That is a good idea." And that is the last. That was down town in Scottsdale.

Q. About when was that, do you recall?

A. Oh, around the middle of October sometime.

Q. Did you have occasion between the time that you first met the defendant Boyd and the time he told you he was leaving to visit the house which you described as Mr. Ellingson's house?

A. Yes, I did.

Q. On those visits, did you have occasion to see any people around the house?

A. Yes, yes, I did.

Q. Could you describe what you saw?

A. Well, there was Mrs. Boyd and at one time I saw a black-headed woman, and another time I saw two blonde-headed ladies.

Q. Could you describe the blondes that you saw with any more particularity? [190]

A. Oh, one was tall and the other one was short, as well as I remember. They both were pretty well bleached, as I remember. That is about all as far as exact details. One was tall and the other was short.

Q. Do you remember anything about the relative ages of the two blondes?

A. They were both young, young appearing, anyway.

Q. Do you recognize specifically anyone in the courtroom whom you have seen here as being either one or both of those blonde girls?

A. Well, there is a possibility I could be mistaken, but the young lady in the back, I think in

(Testimony of George H. Thomas, Jr.)

my own mind, is one blonde lady, and the other one was on the witness stand, I think. I am not sure.

Mr. Stout: May we have that answer read?

The Court: The other one I think is the lady who is on the stand, I am not sure.

Mr. Hagerty: May we have the blonde identified stand up, your Honor?

Q. (By Mr. Sparrow): Do you want to point her out?

A. Yes. Unless I am mistaken, it is the lady back of the aisle next to the last row, the only blonde-headed lady back there.

Mr. Hagerty: For the purpose of the record, Mr. Sparrow, may we have her identified? Is that Judy Burke? Is that the [191] name? Your Honor, could we have that information?

The Court: If Mr. Sparrow does not choose to disclose it at this time, I do not think I should force him to do so.

Mr. Hagerty: I will submit to your Honor's ruling on that.

Mr. Sparrow: No further questions.

Mr. Stout: No questions, your Honor.

Mr. Hagerty: We have no cross-examination, your Honor.

Mr. Campbell: No questions, your Honor.

The Court: You may step down. Next witness?

Mr. Sparrow: May this witness be excused?

Mr. Stout: No objection.

Mr. Campbell: No objection.

Mr. Hagerty: We have no objection.

The Court: The witness may be excused.

KENNETH WARD WRIGHT

was called as a witness on behalf of the government, and being first duly sworn, testified as follows:

The Clerk: Please state your name and occupation to the Court and jury.

A. Kenneth Ward Wright, station attendant at the 66 Truck Stop in Needles, California.

Direct Examination

By Mr. Sparrow:

Q. Mr. Wright, by whom were you employed in December, 1953?

A. By the County of San Bernardino as a Deputy Sheriff. [192]

Q. In that connection, did you in the course of your duties have occasion during that month at any time to raid a house of prostitution?

A. I did.

Q. Could you state, first of all, when that was?

A. On the evening of the 21st of December, 1953.

Q. What place was it to which you went?

A. The motels belonging to Tony's Spaghetti House, approximately four miles east of Newbury, California, on Highway 66.

Q. Newbury, California, is that near Barstow?

A. That is about 25 miles east of Barstow.

Q. Were there some arrests made on the occasion of that raid? A. There were three arrests.

Q. Will you state whether or not on that occasion you arrested one or more blonde girls?

(Testimony of Kenneth Ward Wright.)

A. I arrested one blonde, one redhead and one brunette.

Q. Do you remember the name of the blonde girl?

A. The name she was booked under was Cindy Martin.

Q. Do you recognize anyone whom you have seen in the courtroom as that person known to you as Cindy Martin?

A. I did.

Q. Who was that.

A. That was the witness, Mrs. Bell. [193]

Mr. Sparrow: No further questions.

Mr. Stout: I have no questions.

Mr. Hagerty: No cross-examination on behalf of the defendant, Boyd.

Mr. Campbell: No questions.

The Court: You may be excused, Mr. Wright.

JOHN GOLDBERG

was called as a witness on behalf of the government, and being first duly sworn, testified as follows:

The Clerk: Will you state your name and occupation to the Court and jury?

A. John Goldberg, used car salesman.

Direct Examination

By Mr. Sparrow:

Q. Prior to being in the used car business, Mr. Goldberg, in what business were you engaged?

A. Manufacturer of lingerie.

(Testimony of John Goldberg.)

Q. How long were you so employed and during what periods of time?

A. Oh, about either 1948 or 1949, until about 1954.

Q. Directing your attention to the Fall of 1953, did you have occasion to visit the town of Delano in California?

A. Around the Fall, yes.

Q. Do you recall the names of any of the places that you visited in Delano?

A. Well, there is five of them there: Kitty's, Ann's—— [194]

Q. You visited Kitty's and Ann's among others?

A. Three others.

Q. That was in connection with your business as a lingerie salesman?

A. That is right.

Q. Was Kitty known to you as anyone's "old lady"?

Mr. Campbell: Objected to as calling for hearsay, if the Court please.

Mr. Stout: That is also objected to on behalf of the defendant, Ege, as calling for hearsay.

Mr. Hagerty: May the objection be considered with respect to my client on the ground of hearsay.

The Court: Will you allow me to rule on it first? I was going to sustain it. Objection sustained.

Q. (By Mr. Sparrow): In the course of your business, did you have occasion to visit a number of houses of prostitution?

A. Yes, sir.

Q. In that connection, did you become familiar with the language used by those engaged in the business of prostitution?

A. Yes, I did.

(Testimony of John Goldberg.)

Q. Did you become familiar with the meaning of the term "old lady"?

Mr. Campbell: Objected to as immaterial and incompetent.

The Court: Overruled.

A. Yes, I was.

The Court: You may answer. [195]

A. Well, they have a saying of "old lady."

Q. (By Mr. Sparrow): What does that mean?

A. Well, that means——

The Court: Means what?

A. It means they are with some fellow.

Mr. Sparrow: Some fellow? In what connection are they with some fellow?

Mr. Campbell: Objected to as calling for a hearsay.

The Court: Let him answer.

The Witness: Well, the saying there is, an "old lady" that they are with somebody, you know, that they are with some man.

Mr. Sparrow: With a man?

A. Yes.

Q. What is that man known as?

Mr. Campbell: Same objection.

The Court: Same ruling.

Q. (By Mr. Sparrow): What is the term, if any, applied to that man?

A. Well, they call it fish.

Q. Do they call him by any other name?

A. No, fish.

Q. The man I am talking about.

(Testimony of John Goldberg.)

A. Yes, about the man. They call him fish.

The Court: They call him what? [196]

A. They call him fish.

Q. Fish? A. That is the term I know.

Q. (By Mr. Sparrow): Did they also call them pimps?

Mr. Campbell: Objected to as leading and suggestive, if the Court please.

The Court: That is leading and suggestive. Sustained.

Q. (By Mr. Sparrow): Is that term known to you as being synonymous with any other word other than fish?

A. Yes, well, it is the same as a pimp or fish. That is what they call them.

Q. In connection with your business, was the term, of your own knowledge, "old lady," applied to Kitty in Delano?

Mr. Campbell: Objected to as calling for his conclusion.

Mr. Hagerty: I make the further objection that calls for hearsay, in relation to the defendant, Boyd.

The Court: Overruled.

The Witness: What does that mean—to answer?

The Court: Answer.

The Witness: Give me that question.

(Question read.)

The Witness: She was the landlady.

Q. (By Mr. Sparrow): Was the term "old lady" also applied to her?

(Testimony of John Goldberg.)

A. Well, they usually call—in a business they usually [197] call everybody, “old lady.”

Q. In the meaning in which you just defined the word, “old lady,” was that term applied to Kitty?

Mr. Campbell: That is objected to as calling for his conclusion and hearsay, if the Court please.

The Court: Overruled.

A. Well, yes. “Old lady”—you hear that, yes.

Q. (By Mr. Sparrow): Was she described specifically as the “old lady” of a particular person?

Mr. Campbell: Same objection, if the Court please.

The Court: Same ruling.

The Witness: The only thing I know is from hearsay, hearsay that——

Mr. Campbell: I am going to object at this point to any further answer, if the Court please, the witness having stated his knowledge as completely hearsay, and I object upon the further ground that it is calling for his conclusion.

The Court: The objection will be sustained.

Q. (By Mr. Sparrow): Of your own knowledge, Mr. Goldberg, was the term “old lady” as applied to Kitty, was it applied as being the old lady of some specific person?

Mr. Campbell: Objected to as having been asked and answered, he having stated that his knowledge was hearsay. I submit this calls for hearsay.

The Court: Perhaps we could get at this in another way. [198]

(Testimony of John Goldberg.)

Q. Did you ever hear Kitty referred to as anybody's "old lady," anybody in particular?

A. Well, not from the place there, but I have heard it around, just as you hear, you know, "old man."

Q. Did you ask—did you find out who Kitty's "old man" was?

A. I don't know. I don't know.

Mr. Stout: Your Honor, I object.

The Witness: That is all I heard was his name.

Mr. Sparrow: What name had you heard?

A. Joe.

Mr. Stout: Your Honor, may I object?

The Court: Yes, you may object. The objection is overruled.

Q. Tell us what his name was?

A. The only thing I heard from hearsay I heard it was Joe Bruno, but that is all I know.

Mr. Stout: May the answer be stricken as hearsay?

The Court: Motion denied.

The Witness: I never met the man.

Mr. Stout: I ask that the answer be stricken.

The Court: The motion is denied.

Q. (By Mr. Sparrow): To your knowledge have you ever met Joe Bruno?

A. No, I never met him. [199]

Q. In connection with your visit to Kitty's in the Fall of 1953, Mr. Goldberg, did you have occasion to meet any blonde girls at that place?

A. Yes, I did.

(Testimony of John Goldberg.)

Q. One or more?

A. Well, it is pretty hard to say. I have met one I know.

Q. You remember one?

A. Yes. I just don't remember how many——

Q. By what name do you remember that one?

A. Cindy.

Q. Could you describe what Cindy looked like?

A. Tall, thin blonde.

Q. Would you describe her blonde hair as being bleached or natural?

A. Well, that I couldn't say. It was springy. That is all I can say.

Q. Was there anything about her that caused you particularly to remember the Cindy?

A. Well, I know—I never seen her before, she was new to me.

Q. She was new to you? A. Yes.

Q. Was there anything else in connection with your meeting her that caused you——

A. I tried to sell her clothes and she didn't buy any. She [200] didn't have any clothes.

Q. She didn't have any clothes? A. No.

Q. And yet she didn't buy any? A. No.

Mr. Sparrow: No further questions.

Mr. Stout: I have no questions, your Honor.

Mr. Hagerty: I have no questions, your Honor.

(Testimony of John Goldberg.)

Cross-Examination

By Mr. Campbell:

Q. Mr. Goldberg, you have been introduced here as an expert, I take it, in the language used in the business of prostitution. What type of lingerie is it that you are involved in?

A. Well, dresses, shorts, underwear, stockings.

Q. Is your clientele, or was your clientele made up of prostitutes?

A. Well, I went around to these houses and most of my business was there.

Q. Most of your business was there?

A. Yes.

Q. And over a period of six years?

A. Over a period of six years.

Q. What was the name of your establishment?

A. Well, the last one was I. C. Sales.

Q. Where is that located?

A. 883 Geary. [201]

Q. Are those premises in the vicinity of the place known as The Sarong Club, 875 Geary Street?

A. That is next door.

Q. You are next door to the Sarong Club?

A. Yes.

Q. Were you familiar with the people in the Sarong Club?

A. Yes, I go in there quite a bit.

Q. This girl whom you have described or named as Cindy, did you ever see her there?

(Testimony of John Goldberg.)

A. No, not that I know of.

Q. You stated, I believe, that you never met Joe Bruno, is that right? A. That is right.

Q. How often did you call in connection with your business on the houses of prostitution in Delano?

A. Oh, at the rate of every three or four weeks.

Q. Every three or four weeks?

A. Something like that.

Q. And that continued for a period of approximately six years, is that right?

A. That is right.

Q. You called at the place known as Kitty's place that often?

A. Yes—well, I don't know, for six years now—wait a minute—that is, with that blonde there.

Q. How many places were operating in Delano during the Fall [202] of 1953? A. Five.

Q. With the familiarity you have shown regarding that business, do you know it to be a fact that all the places in Delano were closed on approximately September 29, 1953, by the local authorities?

A. I couldn't be accurate about the dates.

Q. Is that about the time?

A. The dates I am not sure of.

Q. Do you remember the authorities in Delano having closed all the houses of prostitution shortly after the summer of 1953?

A. Yes, they was closed after awhile, but the accurate date I couldn't give you.

(Testimony of John Goldberg.)

Q. Weren't they closed there for the remainder of the year, do you recall?

A. I couldn't tell you truthfully.

Q. And haven't they been closed substantially all of the time since then, or up until the time that you left the business?

A. They were closed for quite awhile since I left the business.

Q. For months?

A. Before I left the business.

Q. And they have been closed for months, have they not? [203]

A. They have.

Q. If I stated to you that they were closed on September 29th, would you quarrel with that date?

A. Well, I wouldn't give you no date, because I am not sure of the dates. I can't give you dates because I don't really remember dates. Just around that time I was working down there until they closed.

Q. You say that you have heard Joe Bruno referred to as the "old man" or fish or something of Kitty.

A. Well, I just heard of Joe Bruno, you know, his name mentioned there, but I never met Joe Bruno, see?

Q. Did you ever hear that he was anything more than a friend of Kitty?

A. Well, I don't know. As "old lady"—they mention "old ladies," friends, this and that; but I heard "old lady." I heard "friend"—you know what I mean—I really don't know.

(Testimony of John Goldberg.)

Q. Of your own knowledge, you know nothing about their relationship, do you?

A. No, about their relationship I don't know, only from hearsay.

Q. And in that business in which you were engaged, and in the prostitution business, racket, people you were dealing with, rumors of all kinds are very common, are they not?

A. Yes, you hear a lot of stories. [204]

Q. A lot of those stories prove to be untrue if you come up against facts, do they not?

A. Well, I never put my mind down to it, if they were true or not. It was none of my business.

Q. Of your own knowledge, you know nothing of their relationship?

A. No, I don't know anything about their relationship.

Q. And you never met Joe Bruno?

A. No, I never have met Joe Bruno.

Mr. Campbell: That is all.

Mr. Sparrow: May this witness be excused?

Mr. Stout: I have no objection.

Mr. Hagerty: I have no objection.

The Court: He may be excused.

JOHN C. MOE

was called as a witness on behalf of the government, and being first duly sworn, testified as follows:

The Clerk: Please state your name and occupation to the Court and jury.

A. John C. Moe, Special Agent, Federal Bureau of Investigation.

Direct Examination

By Mr. Sparrow:

Q. Were you employed in that capacity in January of this year, Mr. Moe?

A. Yes, sir. [205]

Q. Where was your place of employment?

A. San Diego.

Q. Directing your attention to January 12, 1955, did you have occasion in San Diego to interview the defendant, Joseph Boyd?

A. I believe that is the date, sir, if I may refer to my notes to be sure.

Mr. Campbell: At this time may the record show my objection goes to all the testimony of this witness concerning interviews with Mr. Boyd.

The Court: The record will show that.

Mr. Stout: May I also have the same objection?

The Court: The record will show that.

Q. (By Mr. Sparrow): These notes were made by you in the course of your employment at about the time in question, is that correct?

A. These notes were made by me at the time I

(Testimony of John C. Moe.)

interviewed Mr. Boyd, and as to your previous question, I interviewed him on January 12, 1955.

Q. Did you ask him at that time what his employment was? A. Yes, sir, I did.

Q. What did he say?

A. He told me he was a gambler by occupation.

Q. Did you ask him as to his whereabouts in the Fall of 1953? A. Yes, I did. [206]

Mr. Stout: Excuse me, your Honor. Before the witness proceeds any further, may we see the notes, please, that he is referring to?

The Court: You may. Hand them to Mr. Sparrow.

(The document referred to was thereupon handed to Mr. Sparrow and thence to counsel for the defense.) [207]

Mr. Stout: I wonder if your Honor would instruct the jury at this time that, since the evidence so far elicited develops that conspiracy was at an end, that the statements made by Joe Bruno in this interview are binding only upon him?

The Court: I will not do so.

Mr. Stout: Excuse me, I mean Joe Boyd. With that correction, what is your Honor's ruling?

The Court: Still stands.

Mr. Sparrow: Mr. Moe, did you have occasion at that time to ask the defendant, Joe Boyd as to his whereabouts in the Fall of 1953? A. I did.

Q. And what was his reply?

A. He stated he could not recall where he was during the Fall of 1953. He had first stated that.

(Testimony of John C. Moe.)

Q. Did he subsequently make a different statement?

A. He afterwards stated that about a year ago last September——

Q. Excuse me a minute. This is part of the same conversation, is it?

A. Yes, sir. During September of 1953 he was in Scottsdale, Arizona.

The Court: In September, did you say?

A. September, yes, sir.

Q. (By Mr. Sparrow): Did he say anything as to where he was in October, 1953, subsequently?

Mr. Campbell: If the Court please, may I suggest that the entire conversation be elicited rather than by leading or suggestive questions? I object to this last question.

The Court: That might be preferable, and also I think it would be in the interests of time, Mr. Sparrow.

Mr. Sparrow: Certainly, if your Honor please.

The Court: Would you put it in narrative form. Just tell us the entire interview that you had, refreshing your memory from your notes, if necessary.

The Witness: Yes, sir. I asked Mr. Boyd whether—if he could recall where he was during the Fall of 1953, to which he replied—at first replied that he did not, could not recall where he was during the Fall of 1953. He afterwards stated, insofar as he could recall, about September of 1953 he was in Scottsdale, Arizona. While there he stayed at the Palms Motel. He afterwards changed that to

(Testimony of John C. Moe.)

the El Rancho Motel, stating he stayed there for about 25 days.

He stated that on arrival there he planned to set up gambling and contacted the local constable, who gave him the green light for poker and dice. He stated that no pay-offs were made to the local constable. He also stated that his purpose in going to Scottsdale was to marry—remarry his wife; that he had married her in Tijuana, Mexico, about 1951, and that every year thereafter he remarries her.

He stated that his wife's name was Isadora McCormick. [209]

Q. (By Mr. Sparrow): Did you ask him whether or not his wife was known by any other name than Isadora? A. I did.

Q. Would you recite the conversation?

A. He stated that his wife had also been known under the name—Izzy.

I also asked him if she had ever been known under the name Ginger, to which he replied that she had never been known under the name Ginger, and that the only person whom he knew under the name Ginger was one associated with Mr. Ege.

Mr. Stout: Your Honor—excuse me—object to that as hearsay with reference to the defendant, Ege—I will ask that it be stricken.

The Court: Motion denied.

A. He stated he knew nothing concerning the Ginger associated with Ege's background.

Q. (By Mr. Sparrow): Would you recite the rest of the conversation?

(Testimony of John C. Moe.)

A. He stated that the premises which he rented in Scottsdale were rented from a Mr. J. Walter Ellingson.

He stated he could not recall the amount of rent or the size of the residence.

Concerning this, he related that he had planned to rent a five or six unit motel in that area, but could not locate [210] anything like that.

He stated that he made no money gambling in Scottsdale and afterwards had to sell his '52 Cadillac.

Concerning this, I asked him how he had obtained funds to purchase a 1953 Cadillac. He furnished no explanation for that.

He stated that on purchase of the car from Dan Compton, the salesman in Phoenix——

The Court: That's the '53 Cad?

A. Yes, sir.

The Court: In other words, I didn't quite understand that—you say he told you he had to sell his '52 Cadillac, and then you say he had a '53 Cadillac?

A. Yes, sir. He purchased a '53 Cadillac from Dan Compton.

The Court: Did you ascertain the amount of time that elapsed between the sale of the '52 Cadillac and the purchase of the '53 Cadillac from Compton?

A. I don't have that information here, sir.

The Court: Did you ask him?

(Testimony of John C. Moe.)

A. I don't recall whether I asked him that or not.

The Court: Go ahead.

A. He stated that the information which he had furnished—that at the time of purchase of the Cadillac from Compton, he gave a Phoenix, Arizona address, and he also stated that the employment references and information on the application [211] which he filled out at the time of the purchase of this car in Phoenix were principally false.

Q. (By Mr. Sparrow): Did you ask him as to knowing either the defendant, Ege, or the defendant, Bruno?

A. Yes, sir. Concerning the defendant, Ege——

Mr. Stout: May the objection be noted on this, your Honor, that it is hearsay.

The Court: It will be so noted.

A. He stated that he first met Mr. Ege in the Sarong Club in San Francisco about two years previously. At that time Ege was going to buy part of the Sarong Club. His only contacts with Ege, he stated, was when Ege took over his, Boyd's, house in San Francisco. He stated he knew nothing concerning the 700 block or concerning anything in the 700 block on Monterey Street, nothing concerning activities thereafter, after he, Mr. Boyd, left there. He denied knowing anything concerning Mr. Ege's activities or associates.

Q. (By Mr. Sparrow): How about the defendant Bruno?

A. Concerning Mr. Bruno, he stated he was re-

(Testimony of John C. Moe.)

motely acquainted with Joe Bruno. He had heard rumors that Bruno operated a house of prostitution, but thought that Bruno was too smart to be involved in such an operation.

He further stated that Bruno was tied in with a fishing operation in Monterey in some manner.

He also stated that he had played cards with Bruno [212] on some occasions.

Q. Did you ask him concerning his acquaintance-ship with either Miss Bell or a Miss Berg?

A. I asked him that, sir, and I also showed him photographs of both Miss Bell and Miss Mildred Berg. He denied knowing either one. He stated that he had seen Berg, but he knew nothing about her. He denied knowing Bell at all.

Mr. Sparrow: No further questions.

Mr. Stout: I have no questions of this witness.

Cross-Examination

By Mr. Hagerty:

Q. Mr. Moe, how long did you have this discussion or conversation with Mr. Boyd, how long did it take?

A. From 10:45 a.m. until 11:05 a.m. on the 12th of January.

Q. Slightly less than an hour?

A. Well, one hour and five minutes.

Q. Where was this conversation held?

A. In the F.B.I. office in San Diego.

Q. In San Diego?

(Testimony of John C. Moe.)

A. That is, in the San Diego Trust and Savings Bank Building.

Q. Had you sent for Mr. Boyd to come to see you?

A. I had left word with his wife's—with a Mr. and Mrs. McCormick in San Diego——

Q. I see.

A. ——to have him call me or to have him—or have them advise me should he show up in San Diego, stating that I wished [213] to talk to him.

Q. And as a consequence of that notice, he came in to talk to you, did he not?

A. He called me, yes, sir, and I——

Q. And he talked——

A. ——and I requested that he come in.

Q. And he talked freely with you about the questions that you asked him, isn't that true?

A. No, sir.

Q. Did he talk to you for an hour and five minutes—you said he did.

A. Yes, sir, yes, he talked to me for an hour. Most of the time I was asking him questions.

Q. You were asking him questions?

A. Yes, sir.

Q. He was not under arrest, was he?

A. No, sir, he was not.

Q. And he could have refused to talk to you altogether, couldn't he?

A. Yes, sir. He was advised to that effect.

Q. Yes, but he didn't, did he?

A. He didn't refuse to talk, no.

(Testimony of John C. Moe.)

Q. No, he talked to you, gave you a lot of information, didn't he?

A. Well, he gave me some. That's a matter of opinion. [214]

Q. Well, he couldn't give you information about things he didn't know, could he?

Mr. Sparrow: If your Honor please——

Mr. Hagerty: I will withdraw it.

Mr. Sparrow: ——object to it as argumentative.

Mr. Hagerty: I will withdraw it.

Q. He told you he was a gambler, didn't he?

A. Yes, sir.

Q. Had you ever seen him playing cards?

A. No, sir.

Q. He told you his wife's name was Izzy, or she was known as Izzy, isn't that right?

A. Yes, sir.

Q. And her name was, you verified, Isabel McCormick, didn't you?

The Court: Isadora.

Q. (By Mr. Hagerty): Isadora.

A. Yes. Her maiden name, apparently.

Q. You talked to the parents, didn't you, her parents?

A. I talked to her father subsequently, sir, not at that time.

Q. And he told you, also told you that he was in Scottsdale or in Phoenix because they had been married about ten years and that each anniversary they went to a different state and were [215] remarried?

(Testimony of John C. Moe.)

A. Well, he stated that he had first married her in Tijuana about 1951 and then each year subsequent they went somewhere else to be remarried to each other, yes, sir.

Q. On their anniversary.

Mr. Hagerty: No further questions.

Mr. Campbell: I have no questions.

Mr. Sparrow: May this witness be excused?

Mr. Campbell: Certainly.

Mr. Hagerty: Yes.

Mr. Stout: Yes.

The Court: You may be excused.

(Witness excused.)

RAY M. ANDRESS

called as a witness on behalf of the government,
being first duly sworn, testified as follows:

The Clerk: Please state your name and address,
and occupation to the Court and the jury.

A. Ray M. Andress.

Direct Examination

By Mr. Sparrow:

Q. Your occupation, Mr. Andress?

A. Special Agent for the Federal Bureau of Investigation.

Q. How do you spell your last name?

A. A-n-d-r-e-s-s.

Q. Were you so employed, Mr. Andress, in June, 1955?

A. Yes, I was. [216]

(Testimony of Ray M. Andress.)

Q. Where were you employed at that time?

A. At the City of San Francisco, County of San Francisco Division.

Q. And during that month, did you have occasion to talk with the defendant, Joseph Boyd?

A. I did.

Q. Was it on more than one occasion in that month?

A. Yes.

Q. And do you recall the dates?

A. The first time I had occasion to talk to him was on June 21, 1955.

Q. And the second?

A. The second was on June 23, 1955.

Q. Did you thereafter have occasion to talk with him on any other day?

A. On September 6, 1955.

Q. Now, going back to June 21, 1955, where did you talk with him?

Mr. Campbell: I make the objection, if the Court please, that as to the defendant, Bruno, this is hearsay as after the termination of any conspiracy as alleged in the indictment and is incompetent.

The Court: Overruled. Subject to the customary notation in the record.

Mr. Stout: Same objection on behalf of the defendant, [217] Ege.

The Court: Same ruling.

Q. (By Mr. Sparrow): Where was that meeting with the defendant, Boyd? On June 21.

A. I first talked to him on June 21 at 81-A Ina Street.

(Testimony of Ray M. Andress.)

Q. Where is that?

A. It would be in the south part of the city, San Francisco, what I believe is referred to as the Excelsior District.

Q. Was anybody else present at that conversation?

A. Yes, Special Agent Richard E. Lubbin.

Q. Of the Federal Bureau of Investigation?

A. Yes.

Q. Was anyone else there?

A. No, no there was no one else except Mr. Boyd.

Q. Would you recite the substance of that conversation which you had with the defendant, Boyd, on June 21 in San Francisco?

A. Well, at that time I first approached Mr. Boyd, I had a warrant for his arrest, and in talking to him at that time, he wanted to know what charge he was arrested on; which I explained to him.

Q. What did you say in that connection?

A. I told him he was arrested for violation of the White Slave Traffic Act and for conspiracy.

Q. Did you also make any further statements to him as to [218] whether or not he had to say anything?

A. I told him that all he had to do was to identify himself or admit if he was the person named in the warrant, that he didn't have to say anything to me, that anything he might say to me at that time or any subsequent time can be used against him in court.

(Testimony of Ray M. Andress.)

Q. Notwithstanding that, he talked with you there, did he? A. Yes, he did.

Q. Would you recite the substance of that conversation?

A. Well, in regard to the conspiracy, he said at that time, "Well, if taking telephone calls is conspiracy, then I have committed conspiracy."

Q. Did he identify the person with whom he might have had any telephone calls in connection with that statement? A. Yes, he did.

Q. Who was that person?

A. Mr. Edward Ege.

Q. And what, if any, conversation was had further?

A. Well, at that time he admitted that he had operated a house of prostitution at Scottsdale, Arizona, and he also admitted that a Constance Marie Bell and Marian Louise Berg had worked there for him as prostitutes.

I asked him why he hadn't told the agent that in San Diego when they asked him, interviewed him. He said, "well, at that time he didn't feel like telling them the truth."

Q. Did he state when he had operated this house of prostitution [219] in Scottsdale?

A. He stated that he went to Scottsdale about the first part of October, 1953, and that he was down there possibly three weeks.

Q. Did you have any conversation with Boyd as to whether or not he had talked with anyone about the matter with which he was charged?

(Testimony of Ray M. Andress.)

A. He said that he had contacted Miss Berg and had talked to her about the operation at Scottsdale and about her working there, to see what she would say.

Q. Did Boyd make any statement as to his operating a house of prostitution in any other place?

A. Yes, he told me he had operated a house of prostitution in Bakersfield since that time.

Q. Did he say where in Bakersfield?

A. He said it was the P. and H. Apartments, located in the Oildale District in Bakersfield.

Q. Did you have any conversation with him as to whether or not he had had a telephone conversation with the defendant, Ege, while Ege was in San Francisco and Boyd was in Scottsdale, Arizona?

A. Yes, he did. He said that they had.

Mr. Stout: May the record note objection as hearsay, your Honor.

The Court: Objection overruled, proceed. [220]

A. He stated that there had been several telephone calls between himself and Mr. Ege from Arizona to San Francisco.

The Court: We will take the afternoon recess.

Q. (By Mr. Sparrow): Returning to the conversation that you had with Mr. Boyd in San Francisco on June—I am sorry; strike that. When you left off at the recess we were still talking about the June 23rd meeting with Mr. Boyd?

A. June 21st.

Q. Was there any other conversation on the

(Testimony of Ray M. Andress.)

occasion of that June 21st discussion with Mr. Boyd that you recall?

A. No, I can't recall anything else.

Q. Now, going to the June 23rd conversation, would you describe where that was held and who was present?

A. That was in the 800 block of Geary Street and there was just I and Mr. Boyd.

Q. And how did it happen? Did you seek Mr. Boyd out? A. No, I was down——

Q. Under what circumstance?

A. I was working down in that section and he saw me and approached me and began talking.

Q. Would you recite the substance of that conversation?

A. Well, he again talked about his—about the case, that is, the charge that was against him, and said that he had been operating in that fashion for several years, but he——

Q. Operating in what fashion?

A. In small houses around the country. He says, "You know what"—the language, I can quote just exactly what he said: [221] "You know that I have always operated in the last few years in that manner in several places around the country." He says, "I admit I had the house in Scottsdale, Arizona." He said, "I know that when Mrs. Bell left Scottsdale she came to Delano, California but," he said, "that arrangement was made by Mr. Ege." He said, "I had nothing to do with her coming up there to go to work." He said that he didn't know how friendly

(Testimony of Ray M. Address.)

Mr. Bruno and Mr. Ege were, but that Bruno had been in operations—or Mr. Bruno had been in operations around Delano for several years.

Q. What sort of operations?

Mr. Campbell: Is this supposed to be part of the conversation?

Mr. Sparrow: I will withdraw the question.

Q. Did you ask him what sort of operations Bruno had been engaged in?

A. He put it in just these words; he says, “Bruno has been—Mr. Bruno has been operating a house around Delano for several years.”

Q. Do you recall anything further that he said on that occasion?

A. Nothing pertinent to this case. There was other small conversation, there was other people came up and he just continued the conversation.

Q. Now, you have previously testified that you had a third [222] meeting with him on September 6th, 1955. Would you recite the place, the persons present, the circumstances under which you had that conversation?

Mr. Campbell: I would make the same objection to the further conversation. This was the time subsequent to the return of the indictment in this case and therefore is clearly not binding upon the other defendants.

The Court: Overruled.

Mr. Stout: May I make the same objection on behalf of the defendant Ege?

The Court: Same ruling.

(Testimony of Ray M. Andress.)

Q. This happened September 6th, Mr. Andress?

A. Yes, September 6th.

Mr. Sparrow: Will you recite the circumstances, the persons present, and tell us where that meeting took place?

A. On September 6th I was with Agent Paul Cramer; we were driving north on Geary Street and Mr. Boyd drove by us and blew his horn. He apparently recognized me, and we pulled around the corner of Geary to Leavenworth Street and stopped, and Mr. Boyd came back to my car and said that he wanted to talk to me. And at that time I again told him, cautioned him, I said, "Now you know"—I referred to him as Joe—I says, "You know, Joe, that in talking to me that anything you say or might tell me I can always testify to it in court." He says, "Well, that doesn't matter." He said, "Mr. Ege has [223] been talking to me, wanting me to get up and say that I didn't have any telephone conversations with him between Arizona and San Francisco." And he says—and I quote, "I told Ege that I can't do that because you know we had a number of conversations."

Q. Do you recall anything further that was said?

A. That was just about the extent of our conversation at that time.

Q. Mr. Andress, in connection with your work with the Federal Bureau of Investigation, have you had occasion to work a particular type of case more or less to the exclusion of other types of cases?

A. Yes, I have.

(Testimony of Ray M. Andress.)

Q. What type of cases?

A. White slavery traffic act cases.

Q. Over what period of time have you been engaged in the investigation of such cases?

A. About nine years.

Q. In that connection, Mr. Andress, have you had occasion to become acquainted with the reputation of Roxy's in Las Vegas?

Mr. Campbell: Just a moment, if the Court please. We will object as hearsay and an opinion and conclusion of the witness.

The Court: What is the purpose of this? [224]

Mr. Sparrow: To establish the character of Roxy's.

The Court: I think that has been pretty well established, hasn't it?

Mr. Stout: I may question him further on the same subject.

The Court: I have made my ruling. You don't need to make any further remarks.

Mr. Sparrow: I have no further questions.

■

Cross-Examination

By Mr. Stout:

Q. In the conversation of June 23rd you testified that Mr. Boyd approached you in the 800 block on Geary Street; is that correct?

A. That's right.

Q. Now, as a part of that conversation did Mr. Boyd ask you to intervene on his behalf with the

(Testimony of Ray M. Andress.)

United States Attorney? A. No.

Q. Did Mr. Boyd at that time offer to become a government witness in this case?

A. He did not.

Q. Did you at any time suggest to him that he do such a thing? A. I did not.

Q. In connection with the conversation here in the last several weeks—that is the one of September 6th, as I [225] understand it—you saw him at Geary and Leavenworth Streets; is that correct?

A. Right.

Q. And it was in that conversation that he told you about Mr. Ege's contacting him; right?

A. Right.

Q. In that conversation with the witness or with the defendant Boyd did he allude to the fact that he would offer to turn government witness?

A. He did not.

Q. Did you suggest a thing like that to him?

A. I did not.

Q. What did you say when you cautioned him that what he was telling you would be used against him?

A. I told him—I can quote just the words that I used. I said, "Joe, you know that anything you say to me at any time I can testify to in court concerning this case." I had cautioned him about that several times.

Q. In other conversations?

A. Yes. He was talking freely, and I told him that "Anything you say to me any time—I don't

(Testimony of Ray M. Andress.)

work on anything off the record; you can't talk to me off the record. It just isn't done."

Q. Those were the words you used to Mr. Boyd, but he persisted in this conversation with you; is that correct? [226]

A. He continued the conversation for a short period, yes.

Q. You knew that he had entered a plea of not guilty to this particular charge, did you not?

Mr. Sparrow: Object to the question as irrelevant, incompetent and immaterial.

The Court: Overruled.

A. Yes, he told me that he had.

Q. (By Mr. Stout): In which of the several conversations?

A. I believe it was September 6th, was the time that he told me he had entered a plea of not guilty. However, I knew that as a matter of record because I had checked the record before that, but he mentioned that to me.

Q. You knew that this matter was to start trial in the latter part of September, 1955, did you not, from checking the record? A. I did.

Q. Is it your testimony that at no time did you ask Mr. Boyd to become a government witness nor did he volunteer it in any manner whatsoever; is that correct? A. That is correct.

Q. Did you offer to him that he could profit directly or indirectly by such action on his part?

A. I did not.

Q. Did you ask him why he was telling you these

(Testimony of Ray M. Andress.)

things that he narrated to you in these several conversations? [227] A. I did not.

Q. Why not?

Mr. Sparrow: If your Honor please, I will object to the question as irrelevant, incompetent and immaterial and also calling for his opinion and conclusion.

The Court: Let him answer.

A. In my business—I have been doing this for some 17 or 18 years and I never question anyone's reason for telling me those things. It is my business to listen to these people and get all the facts and that is the way I get it. I didn't question him as to why he was talking to me.

Q. You accepted it as a free gift?

A. Right.

Q. It is your experience that people who make a proffer of a free gift of testimony or admissions or confessions to you do it with usually some ulterior motive in mind, do they not?

Mr. Sparrow: Object to the question on the ground that it is argumentative, if your Honor please.

The Court: Sustained.

Q. (By Mr. Stout): You have been investigating white slave cases for how long, sir?

A. It is approximately nine years—probably eight years; a little over eight years.

Q. In that period of time you have questioned many, many, [228] persons accused of participating in white slave cases; right?

(Testimony of Ray M. Andress.)

A. I couldn't even tell you how many.

Q. It would number in the hundreds and possibly even in the thousands, isn't that so, Mr. Andress?

A. Yes, it is.

Mr. Sparrow: If your Honor please, I will object to the question as irrelevant, incompetent, immaterial.

The Court: Overruled.

Q. (By Mr. Stout): In that period of time, Mr. Andress, from your experience with these people, isn't it a fact that the only time that they volunteer information is when they expect to get something from the FBI in return?

Mr. Sparrow: If your Honor please, I will object to the question, first on the ground that it is argumentative, and second, on the ground that it is incompetent, irrelevant and immaterial and doesn't tend to prove or disprove any of the issues in this case.

The Court: Sustained.

Mr. Stout: I have no further questions.

Thank you, your Honor. [229]

Cross-Examination

By Mr. Hagerty:

Q. Mr. Andress, did you make notes after these various conversations? A. Yes, sir.

Q. Did you refresh your memory before testifying here today from those notes? A. I did.

Q. Did you commit them to memory? Is that

(Testimony of Ray M. Andress.)

how you were able to repeat these various conversations?

Mr. Sparrow: I will object to the question on the ground that it is argumentative, if your Honor please.

The Court: Overruled.

A. I immediately make notes on these conversations, most of the time during the conversations.

Q. (By Mr. Hagerty): Have you got those notes with you? A. No, I don't.

Q. You don't have them with you. Isn't it a fact that on this conversation that you had, the last one, September 26th—September 6th of this year—that you and Agent Cramer were following the defendant Boyd in his automobile and you were in a car and you were trailing him?

A. Absolutely not.

Q. You didn't follow him for several blocks?

A. We were on another assignment, no connection with Mr. Boyd whatsoever. Mr. Boyd passed us up. I was—I wasn't driving; Mr. Cramer was driving, and he recognized me and blew [230] his horn and said, "I want to talk to you." He came from the back of our car—drove up beside us and said, "I want to talk to you about a minute," and we pulled over and had this conversation.

Q. You fix its location as being where?

A. This is at the corner of Jones—or Geary and Leavenworth, just around the corner, would be heading toward Market Street from Geary Street.

Q. And what time of the day?

(Testimony of Ray M. Andress.)

A. It was in the afternoon; I don't recall the exact time.

Q. What sort of car was Mr. Boyd driving?

A. At that time he was driving, I believe it was a '53 or '54 Chevrolet coupe.

Q. Color?

A. Kind of a brown—brown body, I believe. I'm not sure of the color; I didn't pay too much attention to the car, but I am positive it was a Chevrolet.

Q. Where did he park?

A. He parked about two or three cars ahead of us.

Q. He double-parked in the street?

A. No, sir.

Q. Parked next to the curb? A. Yes.

Q. Was it on Leavenworth, you say?

A. Yes. [231]

Q. Off Geary? A. Yes.

Q. North or south of Geary? A. South.

Q. South of Geary?

A. Now it was just—it was a couple of blocks up—as you know the street is one way part of the way up Leavenworth, and this was just before it becomes a one-way street.

Q. You weren't a block away from Geary?

A. No, we were in the first block off of Geary.

Q. Did you see the person riding in the car with Mr. Boyd? A. Yes.

Q. And did you know that person?

A. I believe it was his wife; I am not positive.

(Testimony of Ray M. Andress.)

I know that it was a light haired woman—I would consider it very light brown hair.

Q. How close did you get to her?

A. Oh, I was never any closer than at the time he passed us in the car. I was never any closer than that.

Q. You were never within earshot of her, were you? Could she hear the conversation you had with Boyd? A. No.

Mr. Sparrow: I haven't objected heretofore, but I will object on the ground that this line of questioning is irrelevant, incompetent and immaterial.

The Court: Overruled.

Q. (By Mr. Hagerty): As a matter of fact, didn't Mr. Boyd get out of the car and say to you, "Why are you following me?"

A. No, he did not.

Q. He didn't say that? Did you get out of your car?

A. No; Mr. Boyd came back to my car and leaned in the window and talked to me a few minutes, and then he says, "I want to talk to you," so I got out of the car and we stood on the sidewalk by the car.

Q. And at that time didn't you say to him, "Have you seen Judy Berg?" A. Yes.

Q. And didn't he say, "Yes, I saw her about two weeks ago in Fresno"? A. Yes, he did.

Q. Is that the Judy Berg that is sitting there in the courtroom with her hand to her face?

A. Yes, it is.

(Testimony of Ray M. Andress.)

Q. You have known her for how long a time?

A. Oh, for a year or so.

Q. And didn't you say to him, "We have lost track of her; we are trying to find her and we don't know where she is?"

A. I said that I made a telephone call to her former residence the other day in an endeavor to contact her, and she wasn't there, the phone had been disconnected. I said I wanted [233] to get with her.

Q. Didn't you say further, "I was going to put her in custody so we would know that she would be available as a witness, and I didn't because she said, 'I will always be available at the phone number and the address he had given you' "?

A. No, I am sure I didn't say anything about custody.

Q. Didn't you ask him to see if he could locate her and tell her that you wanted to see her?

A. I said to him, "If you see her, just tell her I am looking for her."

Q. Didn't you say to him, "Joe, since your arrest in this case you have never talked to me about it. Why don't you sit down and have a good talk with me and maybe you will walk free out of this whole thing"?

A. No. He said to me, "I am going to talk to my attorney, Mr. Hagerty." He says, "I have been talking to him, and we are going to come to your office on Thursday and I am going to give you a complete story." He says, "Mr. Hagerty says he

(Testimony of Ray M. Andress.)

will be available Thursday or Friday and I will call you and let you know." He says, "I don't know why Mr. Hagerty is holding up to go over and talk to you, but he told me to make an appointment for Thursday and we are going to talk to you about this case. I want to give you my side of the story. He says, "I know I am in this; I know that I am sunk, but I [234] want to give you my side of the story." Those were the words he used. But he says, "Mr. Hagerty is busy, and possibly he will be free Thursday and we will come over to your office and talk to you about it."

Q. Now isn't it a fact that you said to him, "Joe, I'm sorry to see you even involved in this case because I know you had nothing to do with the traffic of these girls from California to Arizona; I know that Judy came on her own. As a matter of fact Judy, when I brought her to testify before the Grand Jury told that to the Grand Jury, and I had to take her from the stand, take her back up to the office and tell her that she might be booked in this thing as an accomplice, to get her to come back and incriminate you in this charge"? Isn't that what you told him?

A. I think that is ridiculous, Mr. Hagerty.

Q. I'm not asking your opinion or what you think. I would like to have an answer to the question.

A. I couldn't have possibly told him anything like that.

(Testimony of Ray M. Andress.)

Q. Your answer is "No," then; you didn't say it?
A. Absolutely.

Q. Isn't it a fact that when you brought Judy Berg—don't you know this of your own knowledge—to testify in this matter before the Grand Jury she had stated that she had gone to Arizona on her own, taking this girl pal with her and that she had no understanding or agreement of any kind with Joe [235] Boyd at the place in Scottsdale?

A. I had no idea what Miss Berg may have said before the Grand Jury, no idea at all. I have never seen that transcript and I have no idea what she said.

Q. Don't you know from conversations with Miss Berg that she was brought to testify before the Grand Jury, then taken back and brought back later after she had been interviewed either by you or by the U. S. Attorney's staff, at which time she testified totally differently than she had originally?

Mr. Sparrow: If your Honor please, object to the question as entirely incompetent, irrelevant and immaterial.

A. I only recall——

The Court: Overruled.

A. I only recall her being to the Grand Jury on one occasion, and at that time I looked her up so that the subpoena could be served on her. The second time you might be referring to was when I interviewed her in connection with something else that came up in regard to this case, some other possible violations. As far as I know, she has never

(Testimony of Ray M. Andress.)

been to the Grand Jury except on the one occasion.

Q. (By Mr. Hagerty): Didn't you make statements to various people that if Joe Boyd would come in and testify in this matter against the others, then he could go free? A. Absolutely not.

Mr. Hagerty: No further questions. [236]

Mr. Campbell: I have just one or two questions.

Cross-Examination

By Mr. Campbell:

Q. I take it that you were the agent who was in charge of this particular investigation?

A. That's right, sir.

Q. And the various phases of the investigation were undertaken either by you or by others at your direction; is that correct? A. That's right.

Q. So that prior to your interview with Mr. Boyd on June 21st you were aware of and had had a report of the interview by Agent Moe at San Diego? A. Yes.

Q. And isn't it a fact that the interview with Mr. Boyd at San Diego was at your request?

A. Yes.

Q. Now as to the interview on June 21st at which you stated there was present another agent, Special Agent Lumen—— A. Lubben.

Q. I got the spelling wrong. Special Agent Lubben. That was an interview which you had with him at the time that he was placed under arrest; is that correct? A. That's right.

(Testimony of Ray M. Andress.)

Q. You were serving a warrant of arrest on him? A. That's right. [237]

Q. Now did you personally, or did you cause other agents to interview the defendant Ege in connection with the investigation? A. Yes.

Q. And on more than one occasion?

A. I know of possibly two occasions that he may have been interviewed.

Q. And that was in connection with this case which you were investigating? A. That's right.

Q. And either you yourself or other agents at your request and under what is known as a collateral investigation interviewed at one time or another during the course of the investigation these various people who have been produced here as witnesses; is that correct? A. That's right, sir.

Q. Now, Mr. Andress, during the course of this investigation and with reference to this particular case, did you ever interview or cause any other agent on a collateral request to interview Mr. Bruno with respect to these matters?

Mr. Sparrow: If your Honor please, I will object to the question as incompetent, irrelevant and immaterial, and not proving or disproving any of the issues in this case.

The Court: Overruled.

A. As I recall, I had—I wasn't in personal contact with [238] Mr. Bruno at the time of his arrest, but as I recall, an attempt was made to interview him, yes.

Q. When? A. At the time of his arrest.

(Testimony of Ray M. Andress.)

Q. By whom? A. The arresting agents.

Q. Was he arrested by an agent of the Federal Bureau of Investigation or by the United States Marshal?

Mr. Sparrow: If your Honor please, I will object to that as calling for the opinion and conclusion of the witness.

The Court: If he knows, he may answer.

A. He was arrested by FBI agents.

Q. (By Mr. Campbell): Had you sent out a collateral on that for interrogation of Mr. Bruno?

A. Yes.

Q. And that was the first time so far as your investigation was concerned—that is on the occasion of his arrest—that you called for any interview of him with respect to this case? A. No.

Q. Did you ever attempt personally to interview him? A. No.

Q. Do you of your own knowledge know of any other agent who attempted to interview him with respect to this case? A. These people—— [239]

Q. No; answer the question yes or no, if you will, Mr. Andress.

A. I have made a number of requests for interviews of these people, of these defendants—a number of requests.

Q. Now, Mr. Andress, in addition to being an agent you are also an attorney, are you not?

A. Had some training, sir.

Q. Legal training? A. Yes, sir.

(Testimony of Ray M. Andress.)

Q. Let's have that question read back to you. I will have the reporter read the question.

(The reporter read the question as follows:
"Do you of your own knowledge know of any other agent who attempted to interview him with respect to this case?")

Mr. Sparrow: I will object to the question as incompetent, irrelevant and immaterial, if your Honor please.

The Court: Overruled.

A. I cannot name the agents at this time, but I know that the requests were made and I made the requests.

Q. (By Mr. Campbell): Do you of your own knowledge know, Mr. Andress, if any of those agents—of your own knowledge—actually attempted to interview Mr. Bruno?

A. I don't know; I can't—

Q. You can't say? [240]

A. You mean personally? I would have to qualify that.

Q. Do you have knowledge—with your legal training I think you know what I mean.

A. Well, I don't have personal knowledge that they might have contacted him and attempted to interview him, no. As far as I know, there was no personal contact made with Mr. Bruno until the time of his arrest. He was a very elusive fellow.

Q. Now you say he was very elusive. You knew at all times where he was?

A. No. I did not.

(Testimony of Ray M. Andress.)

Q. Didn't you know his address in Monterey?

A. Yes.

Q. Did you ever attempt to contact him there?

A. Yes.

Q. Did you leave word for him?

A. I didn't make the contact personally.

Q. Oh, you didn't? A. No.

Q. Someone else did? A. Yes.

Q. To your knowledge they did? A. Yes.

Q. Or did they report to you that they had?

A. They reported to me they had.

Q. But you weren't present? [241]

A. No.

Q. So that of your own knowledge you don't know if any effort was made, do you?

A. If the agent reported to me that he had made the effort——

Q. Just a minute, Mr. Andress. You are not an inexperienced witness. Will you just answer the question directly. Will you read the question, Mr. Reporter?

(The reporter read the previous question.)

A. Well, I will have to answer it this way: By the contacts made at his home I eventually learned where he was and that resulted in his arrest.

Mr. Campbell: Will you read the question to the witness again? I think you can give me a direct answer, Mr. Andress, if you will, please. It can be answered yes or no.

(Testimony of Ray M. Address.)

(The reporter again read the question.)

A. I would say yes.

Q. You were present? A. No.

Q. So that all that you know in that regard is what was reported to you by others? A. Yes.

Q. Isn't that correct? A. Right.

Q. And to that extent it was hearsay, wasn't it, Mr. Address? A. It would be. [242]

Mr. Sparrow: If your Honor please, that calls for his opinion and conclusion.

The Court: Objection sustained.

Mr. Campbell: That is all.

Mr. Stout: Your Honor, may I have further cross-examination as to matters developed by other attorneys on cross-examination?

The Court: Certainly.

Q. (By Mr. Stout): The conversation that you had with Mr. Boyd on September 6th near Geary on Leavenworth Street, as I recall—that is the one I am directing your attention to at this moment. You said in response to questions asked by Mr. Hagerty that Mr. Boyd said to you to this effect—and I didn't get an exact reproduction of your language, but to this tenor and effect, if you will, Mr. Address, "We"—meaning Boyd and Hagerty—"are going to come to your office on Thursday or Friday to give you the complete story. Hagerty will be available at that time. He asked me to make an appointment with you and we will come over and talk to you. I want you to hear my side of the story." Did that

(Testimony of Ray M. Address.)

just about paraphrase that statement made?

A. Yes.

Q. Let me ask you this: In addition to that statement, Mr. Address, did Mr. Boyd say to you to this effect, "I know that when I tell you my side of the story that it will help [243] me"?

A. No, he did not.

Q. No words to that effect were said?

A. No, he did not.

Q. Nor even close to it in proximity?

A. No.

Q. Was anything said at all in that regard?

A. None whatever.

Mr. Stout: Thank you, sir.

The Court: Is that all?

Mr. Sparrow: That is all, if your Honor please.

The Court: You may be excused.

Mr. Sparrow: The government rests.

Mr. Stout: Your Honor, we have the young lady whose testimony was not completed.

The Court: Is she available, Mr. Sparrow?

Mr. Sparrow: Yes, I believe she is.

Mr. Stout: If the Government is resting, there are several motions that would have to be made. May the matter of the Government resting at this time be set aside so that we may continue the cross-examination of this young lady? [244]

Mr. Campbell: May I be heard briefly? I haven't as yet had an opportunity to fully examine the record before the grand jury and I would like to have that opportunity. However, if the reservation may

remain—in other words, if we used up the balance of the day, I would prefer to defer that right of cross-examination until in the morning, if it is agreeable to the Court.

The Court: How are you going to use up the balance of the day?

Mr. Campbell: Well, if the government is resting subject to the completion of that cross-examination, there are of course certain motions to be made, your Honor.

The Court: Are you prepared to make them now?

Mr. Campbell: Yes, your Honor.

Mr. Hagerty: Your Honor, might I be heard? I overlooked two questions I wanted to ask on cross-examination of Mr. Briley just after the noon recess. I asked Mr. Sparrow that he be held and he has been held. I wonder if we could return him to the stand for that further cross-examination?

The Court: All right. Mr. Briley.

CHARLES W. BRILEY

called on behalf of the United States; recalled; previously sworn.

Cross-Examination

(Resumed)

By Mr. Hagerty:

Q. Mr. Briley, you have been in the [245] courtroom during the hearing of this case and you saw the Witness Constance Bell on the stand, did you not? A. Yes, I did.

Q. Did you recognize her? A. I did.

(Testimony of Charles W. Briley.)

Q. You had seen her in the house at Scottsdale, isn't that true? A. I did.

Q. You had also seen the young lady, the blonde there, Judy Berg, is that not true? A. I had.

Q. Do you know of your own knowledge how long the witness Constance Bell was in that house?

A. I couldn't say.

Q. Could you form any estimate?

A. No, I don't.

Q. You were back and forth in that house nearly every day, weren't you?

A. Not every day. I would say three or four times maybe in a week.

Q. And you had conversations with these girls?

A. Yes, I did.

Q. Often?

A. But as far as how long they stayed, I don't know how long they were there. [246]

Q. How many times did you see the witness Constance Bell at that house?

A. I just couldn't say.

Q. How long was that house open, do you know?

A. I am not sure of that.

Q. Do you have any idea?

A. It seems to me about a period of two weeks.

Q. About two weeks? A. Yes.

Q. Do you know of your own knowledge whether this Constance Bell was there all that period of time? A. No, she wasn't there the whole time.

Q. She was there much less than that period of

(Testimony of Charles W. Briley.)

time, isn't that right? A. I think so.

Q. And as I said, you talked to both of them personally there at that place?

A. I am not sure whether I talked to both of them personally; I saw them, but I couldn't—I don't remember talking to both of them personally.

Q. Well, we will say you were in the same room with them, weren't you? A. Yes.

Mr. Hagerty: No further questions.

Mr. Sparrow: May he be excused now? [247]

Mr. Hagerty: Yes.

Mr. Campbell: No objection.

Your Honor, in the interest of time I will withdraw my request for further cross-examination of Mrs. Bell, but I do understand other counsel wish to.

Mr. Stout: I would at this time.

Mr. Campbell: I will terminate my cross-examination of Mrs. Bell.

The Court: Let's get finished with it. Bring her in, Mr. Sparrow.

Mr. Sparrow: It may take about two or three minutes to get her.

The Court: Then it might not be amiss to take a few minutes' recess. We will take a recess for a few minutes.

(Recess.)

CONSTANCE MARIE BELL

recalled on behalf of the United States; previously sworn.

Cross-Examination
(Resumed)

By Mr. Stout:

Q. Directing your attention to yesterday's direct examination by Mr. Sparrow of you, particularly yesterday morning, in response to a question asked by Mr. Sparrow with reference to what occurred in San Francisco before you went from San Francisco to Phoenix, I believe you answered a question to the effect that you received the sum of \$50 from Mr. Ege with reference to sharing expenses. Do you [248] recall testifying in that manner? A. Yes.

Q. Do you recall now whether that is correct or was it some other amount that was given to you?

A. I am almost positive that that was the correct amount.

Q. I see. Do you recall testifying before the grand jury of this district on May 25, 1955?

A. I recall testifying, yes.

Mr. Stout: Page 11, lines 13 and 14. I will ask you to look at page 11. Does your Honor wish to look at it first?

The Court: No.

Q. (By Mr. Stout): I will ask you to look at page 11, the question asked on line 13, and your answer thereto on line 14.

(Handing transcript to witness.)

(Testimony of Constance Marie Bell.)

Have you read it? A. Yes.

Mr. Stout: May I read it to the jury, your Honor?

The Court: You may.

Mr. Stout (Reading): "Q. (By Mr. Sparrow): How much money did Eddie give you to meet your expenses?

"A. Well, I guess it was about \$25.00."

Was that your testimony? A. Yes.

Q. Which answer is correct?

A. I said I guessed. [249]

Q. Which answer is correct? Which amount is correct, \$25 or \$50?

Mr. Sparrow: If your Honor please, I will object to the question as argumentative and the record speaks for itself.

The Court: Let her answer. Do you remember whether it was \$25 or \$50? Do you recall?

A. No, I don't.

Q. (By Mr. Stout): Do you recall testifying on direct examination in response to two questions by Mr. Sparrow that you were present at the time that Eddie Ege called to Scottsdale, Arizona, and had a conversation with somebody at that address?

A. I didn't say he called at Scottsdale.

Q. Phoenix? A. Yes.

Q. All right. Do you recall so testifying here in court yesterday? A. Yes.

Q. You likewise recall testifying on cross-examination that Mr. Ege in your presence made a phone call to Phoenix; is that correct?

(Testimony of Constance Marie Bell.)

A. I don't know if I said in my presence or not.

Q. Well, let me ask you this: Having in mind this question of these issues, can you tell me whether you were present at the time that Mr. Ege called to Scottsdale, Arizona, or [250] Phoenix, Arizona, and talked there with Joe Boyd? A. No.

Q. That is not the fact; you were not present, is that correct?

A. I know that there was a phone call——

Q. No, I didn't ask you that. I asked you only if you were yourself present.

A. I was in the place, but I couldn't hear; I don't know——

Q. You have no knowledge of what was said other than what somebody else might have reported to you; is that correct? A. Yes.

Q. Isn't it a fact that you know of your own knowledge that Judy Berg called to Phoenix, Arizona, and contacted Joe Boyd?

A. I don't know that, no.

Q. Didn't you so testify before this grand jury on the date that I mentioned to you before?

A. She knew about it, but I don't know if she made the phone call or not.

Q. Didn't you so testify before this grand jury on Wednesday, May 25th, 1955, that it was Judy who had made the phone call to Joe Boyd and had made the arrangements?

A. No, I don't believe I testified to that.

Mr. Stout: All right. Will your Honor indulge me a second? Page 11, the question on line 1 and

(Testimony of Constance Marie Bell.)

answers down to line 9. Will you examine it, please?

Does your Honor wish to look at [251] it?

The Court: No.

The Witness: What part?

Mr. Stout: 1 down to 11.

Mr. Sparrow: If your Honor please, I think lines 1 through 12 would give the complete picture.

Mr. Stout: I have no reason to cut it off. I will adopt the United States Attorney's suggestion.

Have you read it? A. No, I have not.

Q. Excuse me. A. I have finished.

Mr. Stout (Reading): "Q. Now, did Eddie have any discussions with Judy that you recall? How did you happen to go down with Judy?

"A. Well, I was, well, you might call a girl friend of Judy's. We were palling around quite a bit. She was what you would call a—she had no—I mean, she wasn't attached to anybody in particular; she went around with Eddie a lot but I mean, she wasn't attached to him. She told him that she had heard that Phoenix was open—not heard, but that she was going to Phoenix and that she had called and it was O.K., and that——

"Q. Did she say whom she had called down there? [252]

"A. Well, I can't say she did, but I mean it was the same place I went to."

You know, therefore, of your own knowledge, isn't it a fact, that Judy Berg is the one who called to Phoenix?

A. No, I don't know of my own knowledge, and

(Testimony of Constance Marie Bell.)

that doesn't say I know of my own knowledge. I said I guessed; I didn't know. She had the address; I don't know how she got it; I wasn't there when she got it.

Q. Judy got the address?

A. I don't know; she is the one that called the number, not the address. I don't know.

Q. Weren't you present in San Francisco when she made a call to Phoenix?

A. No, I was not present.

Q. Of your own knowledge, you know, however, that she made such a call, do you not, because she told you she made such a call?

Mr. Sparrow: Objected to as asked and answered, your Honor.

The Court: She may answer it again. Overruled.

Q. (By Mr. Stout): Do you have the question in mind? A. She told me she made the call?

Q. Yes.

A. Well, she may have told me she made a call for herself. I didn't say that Eddie made arrangements for her to go. I am [253] talking about myself.

Q. Do you know of your own knowledge that she made the arrangement for herself to go to Phoenix?

A. I didn't know of my own knowledge, no.

Q. She told you so, did she not?

Mr. Sparrow: If your Honor please, I object to the question, first, that it has been asked and answered, and second, that he in unnecessarily badgering the witness.

(Testimony of Constance Marie Bell.)

The Court: Objection sustained on the first ground.

Q. (By Mr. Stout): You testified, both on direct examination yesterday and in response to questions put by me on cross-examination, did you not, that upon your arrival in Phoenix that you made a phone call to Eddie Ege; right? A. Yes.

Q. Now, is that the fact? A. Yes.

Q. Pages 13 and 14, commencing on line 16 down to the bottom of the page. Do you have it in mind, 16 to 25 (handing transcript to witness). Have you read it? A. Yes.

Mr. Stout: With your Honor's permission, I will read it.

The Witness: May I say something? You asked me——

Mr. Stout: May I read it first?

The Court: Let her say what she wishes. What is it?

The Witness: You asked me if I made a call, and I [254] said I did make a call, but I never got nobody. That says—now you can read it.

Mr. Stout (Reading): “Q. How long did you spend there?

“A. Not too long; I made a phone call here.

“Q. From the maid's place? A. Yes.

“Q. Whom did you call?

“A. A friend of mine, a boy friend. I mean he had nothing to do with this racket.

“Q. Did you make any calls to Eddie?

(Testimony of Constance Marie Bell.)

“A. There was a couple made, but they weren’t made from the maid’s house. I don’t know—Judy made a call, but I don’t know who she called. I was in the kitchen. I think she called somebody in San Francisco, but I don’t know who.”

Were those questions asked of you and did you give those responses?

A. I guess I did; they are there.

Q. Is it a fact that you made no phone call to Eddie Ege in San Francisco?

A. I never got him, no; I called the Sarong Club, and there was nobody there.

Q. Did you testify before the grand jury that during the month of October, 1953, you and Constance Marie Bell made a telephone call to Joseph Boyd? [255]

A. I don’t recall.

Q. Pardon?

A. I don’t recall.

Q. You don’t recall so testifying? Isn’t it a fact that you didn’t make any phone call whatsoever to Joe Boyd; that it was Judy Berg who made such a phone call?

A. I didn’t make no call, no.

Q. You made no call. So that if you so testified that was an error; is that correct?

A. Yes, I guess it was.

Q. Do you recall testifying that you went in a car to Mr. Boyd’s establishment in Scottsdale, I guess it is, in a car driven by a colored man and woman?

A. Yes, I did testify to that.

Q. Do you recall testifying before the grand jury that you went in Joe Boyd’s car?

A. I don’t remember; maybe I did.

(Testimony of Constance Marie Bell.)

Q. Let me ask you this: Which is the fact?

Mr. Sparrow: If your Honor please, I think she is entitled to have her grand jury testimony before her.

Mr. Stout: I am not proceeding by way of impeachment; I am proceeding by way of cross-examination, your Honor.

The Court: Show her the testimony.

Mr. Stout: I beg your pardon?

The Court: Show her the testimony. [256]

Mr. Stout: Yes, your Honor. Page 14, line 14 to the top of page 15, line 5—line 14 on page 14 to 5 on page 15.

(Handing transcript to witness.)

With the Court's permission, may I read it to the jury? Commencing at line 14, page 14:

“Q. And who, if anyone, came out to pick you up from the maid's house?”

Mr. Campbell: Pardon me: I can't hear you from this distance. I am sorry.

Mr. Stout (Reading): “Q. And who, if anyone, came out to pick you up from the maid's house?”

“A. Well, Joe came.

“Q. Joe who? Boyd? A. Yes.

“Q. What was he driving, do you remember?

“A. He had a—I think he had a Cadillac; I am not sure.

“Q. What did he do?

“A. Well, he came and picked us up. I don't know if we went in Judy's car or his. I don't—I

(Testimony of Constance Marie Bell.)

know she didn't drive herself any more. This colored man drove, that and the maid. I think we went in the car with them or Judy left her car for them and they brought theirs out to come back, or they brought out hers to come back. I can't exactly remember what the transaction was. [257]

“Q. So you and Judy went out with Joe Boyd in Joe's Cadillac?

“A. I don't know; I guess it was.”

Were those questions asked of you and did you give those answers?

A. Yes, I guess I did, if they are there.

Q. Can you tell me now of your own recollection which answer is correct?

Mr. Sparrow: If your Honor please, I don't see that there is anything in those answers that is in any way inconsistent with her previous testimony.

The Court: That is a question for the jury to determine. Overruled.

A. I know that, as I said in the testimony before, I don't know exactly what car we went in, but I know that the colored maid—there was a colored maid or somebody was with us. I don't know if it was their car or whose car it was. I was so tired when I got there after driving all that time I don't think it——

Q. (By Mr. Stout): Isn't it a fair statement that even at the time when the grand jury met and you testified before the grand jury on May 25, 1955, that your recollection as to the events in question was obscure and hazy; isn't that the fact?

(Testimony of Constance Marie Bell.)

A. Well, if you think they are, it is your opinion.

Mr. Sparrow: If your Honor please, I will object to the [258] question as characterizing and calling for an opinion and conclusion.

The Court: Was your memory better when you testified before the grand jury than it is today?

A. Well, some things I remember a lot better. Other things come to me—sometimes I step off the stand and things I remember after, but I get so nervous up here I can't possibly remember them sometimes.

Mr. Stout: I hope I am not making you nervous now.

A. I just am nervous anyway; you don't make me nervous.

Q. Do you recall testifying in response to questions by Mr. Sparrow that while you were with Mr. Ege, the defendant Ege, that you were placed in a house of prostitution on the Natoma Street in San Francisco?

Mr. Sparrow: If your Honor please, I will object to that question as incompetent, irrelevant, immaterial, and I don't believe the record will show that any such question was asked.

The Court: There was some reference to Natoma Street, I think.

Mr. Sparrow: Yes, your Honor. I asked her how she became acquainted with the person who ran the premises at Natoma Street and she replied it was through the defendant, Ege. There was no testimony

(Testimony of Constance Marie Bell.)

as to her being placed by Ege in the Natoma Street address.

The Court: Were you ever placed in the Natoma Street [259] premises as a person who was engaged in acts of prostitution or not? A. No.

The Court: No; her answer is "No."

Mr. Stout: Then I have no further questions at this time, your Honor.

The Court: We will take a recess at this time, ladies and gentlemen, until tomorrow morning at the usual hour, which is 10:00 o'clock. You are of course admonished as it is my duty to admonish you not to discuss the case either among yourselves or with anyone else, and of course not to form or to express any opinion until you have heard all of the evidence, the instructions of the Court, and the case is finally submitted to you.

Tomorrow morning at 10:00 o'clock.

Mr. Sparrow: If your Honor please, may I ask, is this witness to be back at 10:00 o'clock tomorrow morning?

Mr. Campbell: I have no further questions of her.

Mr. Hagerty: I have no further questions of her, your Honor.

Mr. Sparrow: May she be excused?

The Court: You may be excused, Miss Bell.

(Thereupon, an adjournment was taken to tomorrow, Wednesday, September 28, 1955, at 10:00 o'clock a.m.) [260]

September 28, 1955, 10:00 A.M.

(The following proceedings out of the presence of the jury.)

(On behalf of the defendants, and each of them, motions made for judgment of acquittal or in lieu thereof motions to dismiss, and to strike.)

The Court: All right, gentlemen, I am prepared to rule.

With regard to the motions of acquittal which have been made by Mr. Campbell and by Mr. Haggerty, those motions will be submitted until the conclusion of the case.

With regard to the various motions to strike which have been made, obviously in my instructions I am going to tell this jury what conversations and what acts are binding upon each defendant to the exclusion of others, so that I will try to the best of my ability to make it abundantly clear to the jury that certain conversations, for example, Boyd may have had with a variety of people, are not binding upon the other two defendants; that certain activities of Bruno are not binding upon the other defendants; that certain activities of Ege are not binding upon the other defendants.

In other words, I have chosen that method of procedure rather than have the cumbersome and awkward situation of having each lawyer stand up and object and causing the Court to rule: "Now, ladies and gentlemen of the jury, you will [262] understand that this testimony is only being received (as

for example), as against the defendant Bruno." The result after a trial of the character of this is hopeless confusion in the minds of the jury.

I shall attempt to clarify that in my instructions, so that you may generally be apprised at this time that your motions to strike, insofar as I consider them apt and pertinent, will be granted, in certain respects. Obviously I can't tell you that now because I haven't had a chance to review this transcript. However, I will cover that in a general way.

As to Mr. Stout's motion for election, it will be denied. However, I have in mind your motion to strike, Mr. Stout, the testimony of Ellingson, Rathjen, Briley, Thomas Wright, Goldberg, Moe and Andress, and I shall handle those motions in the same fashion that I have indicated that I will handle the others.

Do I make myself clear, gentlemen?

(Affirmative response.)

(Recess taken until 1:30 o'clock p.m.) [263]

Wednesday, September 28, 1955, 2:00 o'Clock

The Court: Proceed.

Mr. Hagerty: Your Honor, after our conference at noon and consideration of the matter with the defendant Boyd we have decided to rest his case.

The Court: All right. The defendant Boyd rests.

Mr. Campbell: If the Court please, the defendant Bruno also would rest.

Mr. Hagerty: If your Honor please, if there is

to be any more testimony, could we have a cautionary instruction to the jury that that would not pertain to the defendant Boyd?

The Court: I don't just understand what you mean.

Mr. Hagerty: The other defendant, I understand, is not going to rest and will proceed; then the evidence will be as to him alone.

The Court: What is the character of the cautionary instruction? You mean to the effect that the mere fact——

Mr. Hagerty: The mere fact that he has rested, that there is no further evidence against him in this case.

The Court: And the same as to the other defendant?

Mr. Campbell: The same as to my defendant.

The Court: The record discloses, by the statement of counsel, ladies and gentlemen of the jury, that the defendant Boyd rests his case. The record likewise discloses that the [264] defendant Bruno rests his case. And I have heretofore indicated to you when you were impaneled, the mere fact that a defendant does not take the stand, either out of his own desire not to do so or because of advice of his counsel, is not to be taken in any way as any admission of guilt as against him. That pertains to both Mr. Boyd and to Mr. Bruno. Is that sufficient, gentlemen?

Mr. Campbell: I think we further had in mind the fact, your Honor, that evidence offered or received from this point forward with respect to the

remaining defendant would not apply to him, should that be considered in the case of either Boyd or Bruno. I presume that will be covered in the instructions.

The Court: I don't think this is the appropriate time to get such an instruction.

Mr. Campbell: Very well.

Mr. Stout: At this time, your Honor, on behalf of the defendant Ege, I should like to waive an opening statement. We will proceed to take the testimony of Mr. Ege. Will you take the stand and be sworn?

EDWARD RAYMOND EGE

a defendant herein, called as a witness in his own behalf; sworn.

The Clerk: Please state your name and occupation to the Court and jury. [265]

A. I am a hundred per cent disabled veteran from the United States armed forces and am also a bartender.

Mr. Sparrow: If your Honor please, I will object to that and ask that be stricken out as not responsive.

Mr. Stout: It is not responsive.

The Court: The fact that you are a disabled veteran is not your occupation. You were asked your occupation.

A. Right; I thought you meant income.

Direct Examination

By Mr. Stout:

Q. Bartender?

A. Bartender.

(Testimony of Edward Raymond Ege.)

Q. Is that correct? A. Yes, sir.

Q. And your name? Let's start from scratch and go through it. A. Edward Raymond Ege.

Q. Where do you live, Mr. Ege?

A. I live at the present time?

Q. Yes.

A. I am staying at Tracy at the Western Hotel.

Q. What is your occupation at the Western Hotel?

A. I am the bartender and room clerk, sir.

Q. By whom are you there employed?

A. By William Giff.

Q. That is G-i-f-f, is it? A. Right. [266]

Q. How long have you been employed there?

A. I have been employed there since some time in the latter part of July.

Q. That is July of this year; is that correct?

A. Yes.

Q. Mr. Ege, you have been accused in an indictment of having done two crimes. The first is that on or about October 17, 1953, in San Francisco that you knowingly transported in interstate commerce one Constance Marie Bell from this city to Scottsdale, Arizona, for the purposes of prostitution. That brings us to this question: Do you know Constance Marie Bell?

A. Do I know Constance Marie Bell?

Q. Yes. A. Yes, I do.

Q. Did you meet her in the year 1953?

A. Yes, I did.

(Testimony of Edward Raymond Ege.)

Q. And under what circumstances did you meet her? About what time was it and where did it take place?

A. I met Constance Marie Bell at approximately 5:30 in the evening at 395 Monterey Boulevard in San Francisco.

Q. Who brought her there?

A. A girl named Rosalind.

Q. Had you ever seen her before?

A. Constance Marie Bell? [267]

Q. Yes.

A. No, sir, I had never seen her before.

Q. Was she introduced to you under that name?

A. No, sir.

Q. Now, the name Judy has been mentioned. Did you know a Judy?

A. Yes, I was with Judy that afternoon.

Q. And as you sit there now, refreshing your recollection as to the beginning of these events, did you know Judy's last name as of the date of this alleged offense?

A. I did not.

Q. Under what name was the girl Constance Marie Bell introduced to you?

A. Cindy.

Q. Any last name given?

A. I don't know whether it was at that time or not.

Q. Subsequently?

A. Cindy Marlow was the name that I come to know her as.

Q. Did she stay with you at 395 Monterey Boulevard for approximately one week after you met her?

(Testimony of Edward Raymond Ege.)

A. Not right at that time. A few days later she came to 395 Monterey Boulevard.

Q. What did she say in that regard about her coming to 395 Monterey Boulevard?

A. She said that she was living in town and some gentleman [268] there was paying her keep in the Columbia Hotel and she didn't like the circumstances and she wanted to get away and I said, "Well, why don't you come and stay out here?"

Q. And that is what she did?

A. That's what she did, sir.

Q. You heard her testify about her going to Folsom. Are you familiar with the premises that she testified about in Folsom?

A. Yes, I am.

Q. In what way?

A. I own the property there.

Q. How long have you owned that property?

A. I bought the property in 1949.

Q. What kind of property is it?

A. It is an eleven room frame house.

Q. Old house?

A. Yes, it is quite old.

Q. What was the condition of the property back in October and September, 1953, prior to your meeting Constance Marie Bell? Was it in use?

A. It was not in use.

Q. Subsequently was that property put to use? Did you do anything with the property?

A. Yes, I let a girl take it over named Barbara Reynolds.

Q. Barbara Reynolds? [269]

A. Right.

(Testimony of Edward Raymond Ege.)

Q. And did you receive rent from Barbara Reynolds for the use of that property?

A. No, I did not.

Q. From time to time did you go to Folsom to look at your property?

A. I went up there to do some repair work and fixing up at the place.

Q. Do you own that property with any other person?

A. Yes.

Q. Who?

A. Frank Alvernaz.

Q. Will you spell that last name?

A. A-l-v-e-r-n-a-z.

Q. Where does he live?

A. He lives in Sacramento.

Q. Is he a friend of yours for many years?

A. Him and I when I got out of the Veteran's Hospital, after that I went to work in his place as a bartender on a working commission of a 50 per cent basis.

Q. You have known him since that time?

A. Yes, sir.

Q. When did that event occur, the first time that you knew him?

A. Some time in '49; I don't recall exactly. It is when I [270] got discharged from the hospital.

Q. Mr. Ege, you are likewise accused of conspiring to transport Constance Marie Bell in interstate commerce for the purposes of prostitution with Joseph Boyd. Do you know Joseph Boyd?

A. Yes, I know Joseph Boyd.

(Testimony of Edward Raymond Ege.)

Q. Did you know Joseph Boyd prior to September or October, 1953?

A. The exact date was brought out in this court. I knew him very vaguely, met him a few times and I took over his property where he was living and rented his house, took the lease on his house at 395 Monterey Boulevard.

Q. Where was it that you first met him?

A. I met Joe Boyd, as close as I can remember, in the Sarong Club.

Q. What were you doing there?

A. At that time I was—I hadn't come down here then. I think maybe I was just in there having a drink when I first met him.

Q. Subsequently you were buying an interest in the Sarong Club?

A. That is what my intentions was.

Q. You likewise paid over some money as part of this payment, is that correct?

A. I made a start to buy in the place.

Q. You didn't get very far? [271]

A. No, I went busted.

Q. Other than that very brief acquaintance with Mr. Boyd, do you know him under any other circumstances?

A. I know Joseph Boyd under no other circumstances.

Q. So far as the defendant Joseph Victor Bruno is concerned, do you know Joseph Victor Bruno?

A. Only in this courtroom.

Q. Am I correct, then, by that answer that you

(Testimony of Edward Raymond Ege.)

mean that you had never seen Joseph Victor Bruno until you were brought into this courtroom in the course of these proceedings?

A. I have never saw Joseph Victor Bruno in my life before I saw him in this courtroom.

Q. All right. Now, let's just cover the other side of it. You had never seen him; had you ever talked to him?

A. I have never saw him or never talked to him.

Q. Now, in going back to the first count in the indictment, the Mann Act charge, where you were supposed to have assisted in the transportation of Constance Marie Bell from San Francisco to Scottsdale, Arizona; in that regard, how long, if you know, was the girl Constance Marie Bell in Folsom?

A. I am not positive; I believe that it was less than a week.

Q. Who took her there, do you know?

A. To the best of my knowledge, Judy took her there.

Q. Do you know that of your own knowledge?

A. Of my own knowledge, no. [272]

Q. You have heard it from other people?

A. Yes.

Q. After the Folsom episode, did Constance Marie Bell, known to you then as Cindy Marlow, return to your establishment at 395 Monterey?

A. Yes, she did.

Q. How long was she there on this occasion?

A. I believe about a day or so; not longer.

Q. Not longer?

A. No, sir.

(Testimony of Edward Raymond Ege.)

Q. Do you know where she went, of your own knowledge, after she left?

A. Do I know where she went?

Q. Yes, of your own knowledge.

A. Of my own knowledge, I—well, now, I don't know just how to answer this question. I will say this: that I found out through speaking with Judy that she was staying at Judy's mother's home with Judy.

Q. This is after she left your house?

A. After she left my house, yes, sir.

Q. Did you know at the time that she left your house that it was her intention or Judy's intention to go to Scottsdale, Arizona?

A. I had no knowledge whatsoever of where those girls went to. [273]

Q. When was it that you learned for the first time that Judy and Constance Marie Bell, known to you as Cindy Marlow, had gone to Scottsdale, Arizona, or to Phoenix?

A. From Constance Marie Bell in Fresno.

Q. After her return from that state, is that correct?

A. Correct.

Q. The indictment charges you with the commission of certain overt acts pursuant to this conspiracy that is charged in the indictment. The first overt act—I will read it to you, and this is with the aid and assistance of the bill of particulars that was supplied to us by the government:

“In June 15, 1953, defendants Joseph Boyd, alias

(Testimony of Edward Raymond Ege.)

Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California.”

A. In October——

Mr. Sparrow: I will object to the question as not being a fair representation of what the bill of particulars says. He says in June 15, 1955. That is not what it said.

Mr. Stout: Well, on or about June 15. With that characterization, would that suffice, Mr. Sparrow?

Excuse me; I don't mean to be unfair.

The Court: Read it again in the exact language of the indictment.

Mr. Stout: The indictment says in June, 1953, and I have inserted the date the 15th as given to us by the bill of [274] particulars; that is all I did. I can get the bill of particulars.

The Court: That's all right. I think with your amendment to include “on or about,” that will be sufficient.

Mr. Stout: Suppose, then, as I go through these I add that to each one of these questions?

The Court: Very well.

Q. (By Mr. Stout): Did you go with Joseph Boyd to see the witness who testified on behalf of the government whose name is G-i-o-n-i—Gioni—pursuant to any conspiracy which you had with Joe Boyd to take Constance Marie Bell from Scottsdale, Arizona, for the purpose of prostitution?

Mr. Sparrow: I will object to the question as calling for the opinion and conclusion of the witness, if your Honor please.

(Testimony of Edward Raymond Ege.)

The Court: That was the first portion of your question? "Did you go?" Did I understand you to say?

Mr. Stout: Did you go, yes, or did you meet. I said, Did you go to that address with Joseph Boyd pursuant to and in furtherance of the objects of the conspiracy?

The Court: The objection will be overruled.

Q. (By Mr. Stout): Do you have the question in mind?

A. You asked me if I went to this address on Noriega?

Q. Noriega. To conspire with—pursuant to any conspiracy that existed between you and Joe Boyd.

A. No, I did not. [275]

Q. Have you under any circumstances directly or indirectly ever conspired with Joseph Boyd, alias Joe Boyd, one of your co-defendants, either as charged in this indictment or at any other time conspired with him for the purpose of moving Constance Marie Bell or any other girl from one state to another for the purposes of prostitution?

A. I have not.

Q. In overt act No. 2 it is stated approximately as follows:

"On or about September 15, 1953, defendant Edward Raymond Ege took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, to 395 Monterey Boulevard in San Francisco, pursuant to the ob-

(Testimony of Edward Raymond Ege.)

jects of this conspiracy between yourself and Joseph Boyd and Joseph Victor Bruno.”

Is that a fact or is that not a fact?

A. That is not a fact.

Q. The third overt act in this conspiracy indictment charges you with having had a conversation with Constance Marie Bell on or about September 15, 1953, pursuant to the objects of this conspiracy to transport——

Mr. Sparrow: If your Honor please; that is not a fair characterization of the third overt act, and I will object on that ground.

The Court: Perhaps you can state it a little better, Mr. [276] Stout.

Mr. Stout: All right, your Honor; I shall endeavor to do so.

Q. The third overt act reads approximately as follows:

“On or about September 15, 1953, at 395 Monterey Boulevard, San Francisco, you, the defendant, Edward Raymond Ege, had a conversation with Constance Marie Bell.”

Did you have a conversation with the young lady on that date?

A. Well, I would put it this way: On that day there was present Rosalind and Constance Marie Bell and Judy and we were all drinking, and I think there were some other people there also, and it was kind of a party, and any conversation that had to do with prostitution, I don't recall it at the present time.

(Testimony of Edward Raymond Ege.)

Q. It is alleged in the fourth overt act, and I will read it, approximately as follows:

“That on or about October 13, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, San Francisco.”

I will ask you, did you drive your car from Folsom to San Francisco pursuant to any conspiracy between yourself, Joseph Victor Bruno and Joseph Boyd to transport Constance Marie Bell for the purposes of prostitution from San Francisco to Scottsdale, Arizona? A. I did not. [277]

Q. The fifth count, or fifth overt act of the indictment states approximately as follows:

“On or about October 20, 1953, at 395 Monterey Boulevard, San Francisco, that you, Ege, gave the telephone number in Arizona of defendant Joseph Boyd to Constance Marie Bell.”

Did such an event ever occur?

A. It did not.

Q. Did you at that time or do you have now any recollection of any phone number that Joseph Boyd had given you or that you had obtained in any other manner relative to Scottsdale, Arizona, or Phoenix, Arizona, or any part of Arizona?

A. I never knew Joe Boyd was in Arizona.

Q. Your answer, then, is “No,” to my question?

A. No.

Q. The sixth overt act is something that you apparently would have no knowledge of. The seventh is one of those likewise.

(Testimony of Edward Raymond Ege.)

The eighth overt act is approximately as follows:

“On or about October 25th, Constance Marie Bell in the State of Arizona had a telephone conversation with you in San Francisco.”

Did such an event ever take place?

A. Would you repeat the question again, please?

Q. Yes. Let me paraphrase it. On or about October 25, 1953, [278] —let’s make it from October 1st to November 1st—did you have a telephone conversation with Constance Marie Bell while she was in Arizona?

A. No, sir, I did not.

Q. It is stated in the tenth overt act approximately as follows:

“That on or about November 5th or November 10th in the City and County of San Francisco that you took the sum of approximately \$700 from Constance Marie Bell.”

Did anything like that happen?

A. No, I never did, no.

Q. Do you recall her testimony that this event occurred not in San Francisco but in Fresno and that she gave you three to four hundred dollars, so I will ask you this question:

From the beginning of your relationship to the end of your relationship with Constance Marie Bell—that is, from approximately September 15, 1953, until the end of that relationship—did you in the City of Fresno ever take any sum of money from Constance Marie Bell?

A. I never took any sum of money from Constance Marie Bell.

(Testimony of Edward Raymond Ege.)

Q. The eleventh overt act of the conspiracy indictment reads approximately as follows:

“That on or about November 10th, 1953, you drove Constance Marie Bell from San Francisco to [279] the County of Yolo in California.”

Do you know where Yolo County is?

A. Yes, I do.

Q. From September 15, 1953, through, say December 1st, 1953, on any occasion did you drive her to Yolo County?

A. To my best recollection, I never drove Constance Marie Bell to Yolo County.

Q. Have you ever taken her on any trips with you?

A. I have never taken Constance Marie—well, I take that back; I took her to San Rafael on several occasions, is the only trip I ever took Constance Marie Bell any place.

Q. Now, let's see; it is stated in the twelfth overt act of the indictment approximately as follows:

“That on or about December 7, 1953, you drove Constance Marie Bell from San Francisco to Barstow, California.”

Did such an event ever transpire?

A. It did not.

Q. It is alleged in the thirteenth overt act of the indictment, with reference to the conspiracy count, that on or about December 20th, 1953, you took the sum of approximately \$900 from Constance Marie

(Testimony of Edward Raymond Ege.)

Bell in Barstow, California. Did such an event ever take place? A. No, it did not.

Q. Miss Bell testified that this sum was approximately 100 [280] to 200 dollars. Did you give her that sum or any sum—or take from her—excuse me—that sum or any sum?

A. No, I did not.

Q. It is stated approximately as follows in overt act No. 14:

“That on or about December 22, 1953, you drove her, Miss Bell, from Barstow to Las Vegas.”

Did such an event take place?

A. I never drove Constance Marie Bell to Las Vegas from Barstow, or any other place, for that matter.

Q. Other than San Rafael? A. Correct.

Q. So far as you know of your own knowledge, do you know whether or not Constance Marie Bell was ever in the city of Las Vegas, Nevada?

A. If she was in—ever in Las Vegas, I never knew anything about it. She was there by herself if she was there. I don't have any knowledge at all of her ever being there or knowing that she was there.

Q. I will ask you this question—I am using a colloquialism that I think is understandable to everyone here: Did you ever turn Constance Marie Bell or Cindy Marlow out to ply her profession as a professional prostitute?

A. Just what do you mean by “turn her out”?

Q. Did you provide her with a place to ply her trade as a [281] professional prostitute?

(Testimony of Edward Raymond Ege.)

A. No, I didn't.

Q. Under any circumstances?

A. Under no circumstances.

Mr. Stout: I have no further questions.

Mr. Campbell: I have rested.

Mr. Hagerty: The defendant Boyd has rested, too, your Honor.

The Court: The record sufficiently discloses that the defendant Boyd and the defendant Bruno have rested.

Cross-Examination

By Mr. Sparrow:

Q. Are you married, Mr. Ege?

A. Yes, I am.

Q. Is that the correct pronunciation of your name, Ege? A. Yes, it is.

Q. And when were you married, Mr. Ege.

A. I was married in 1946, July—sometime in July.

Q. And where was that?

A. In Reno, Nevada, sir.

Q. To whom were you married?

A. Gloria Jean Ege.

Q. Gloria Jean Ege. What was her maiden name?

A. That was her maiden name—oh, Fowler.

Q. Gloria Jean Fowler? A. Correct. [282]

Q. Do you recall who was with you on the occasion of your marriage?

(Testimony of Edward Raymond Ege.)

A. Who was with me at the occasion of my marriage?

Mr. Sparrow: Besides your wife.

Mr. Stout: Excuse me. May I present an objection that this is incompetent, irrelevant and immaterial?

The Court: Overruled.

The Witness: Will you repeat the question again?

Mr. Stout: Do you recall who was with you besides your wife at the time you were married, if anyone? A. Yes.

Q. Who was that?

A. It was Nick Corritas and a girl named Toni.

Q. I beg pardon?

A. A girl named Toni and Nick Corritas.

Q. How do you spell Corritas?

A. I don't know how you spell Corritas.

Q. Did they act as your witnesses?

A. They stood up as best men, yes, sir.

Q. What is the girl Toni's last name?

A. I don't know Toni's last name.

Q. What was the date of your marriage in 1946 in Reno?

A. I don't know; I think it was the 23rd.

Q. 23rd of what?

A. 23rd of July or June—June or July. She has a birthday; [283] it was in June or July.

Q. Are you still married? A. Yes, sir.

Q. Your wife has also been known under the name of Ginger, has she not? A. That's right.

(Testimony of Edward Raymond Ege.)

Q. She has also been known under the name of Penny O'Brien, has she not?

Mr. Stout: This is objected to on the ground that it is incompetent, irrelevant and immaterial; the names under which his wife is known are not binding upon him.

The Court: The objection will be overruled.

A. If she was ever known under the name of Penny O'Brien, I have no knowledge of it.

Q. (By Mr. Sparrow): Mr. Ege, were you employed at that time in 1946 in June or July?

A. Yes, I believe I was; I was tending bar in Sacramento; I am not sure.

Q. Do you remember where?

A. Oh, I work at Tiny's and the Sacramento Hotel.

Q. About how long did you work at Tiny's?

A. I can't recall just how long I worked there, sir.

Q. A matter of a year or two years?

A. Oh, no, I didn't stay employed that long. I was just employed there a short time and then I ran a card room which [284] was next door to the Buffalo Club at 19th and S in Sacramento.

Q. How long did you do that?

A. I was approximately running the card room for six or seven months.

Q. What did you do thereafter?

A. I don't recall; I tended bar.

Q. Whereabouts?

A. Oh, now, let's see; I was stricken ill and told

(Testimony of Edward Raymond Ege.)

not to work, I believe, but I still went ahead and made a dollar where I could make it at that time.

Q. Where did you make it?

A. Well, playing cards and tending bar sometimes at the Buffalo Club or any place where people needed a bartender.

Q. This was in Sacramento, was it?

A. Yes, sir.

Q. How long did that situation last?

A. I beg your pardon?

Q. How long did that situation last?

A. Until I was admitted to the hospital in Livermore?

Q. When was that?

A. That was the latter part of '46 or the first part of '47; the dates I don't remember exactly.

Q. How long were you there?

A. I was in the hospital two years.

Q. Thereafter what did you do? [285]

A. When I got out of the hospital, I went to Sacramento and took a working interest in a bar called the Double Play on the River Road as a bartender and manager of the establishment.

Q. How long did you stay there?

A. I was there a little over a year. [286]

Q. And that brings us up to about when, to the best of your recollection?

A. I don't know. You're keeping track of the dates. I don't recall. Let's see, if I got out of the hospital in 1949, sometime in '49, it would bring me into possibly 1950, going into '51.

(Testimony of Edward Raymond Ege.)

Q. And then what did you do?

A. Well, I think for awhile I scuffled around, I played cards and drewed my disability.

Q. How else other than playing cards did you make a living?

A. Well, like I said before, I tended bar, I drewed my disability, and anything I could make a dollar at I did.

Q. Did you drive a car at that time, Mr. Ege?

A. Yes, I did.

Q. What kind of a car?

A. I had a 1950 Cadillac.

Q. What type of Cadillac was it, coupe, sedan?

A. Just a coupe.

Q. Was your wife employed at any time between 1946 and 1950?

A. My wife—

Mr. Stout: Objected to—just a moment—objected to on the grounds it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. My wife was in the Weimar Sanitarium at Weimar, California, and also at the sanitarium at Murphys, California, for [287] tuberculosis for four years in that period—the years I couldn't tell you which one exactly that they are.

Q. (By Mr. Sparrow): About 1946 to 1950, is that right?

A. Yes, that's correct. In fact, she was out for a while and then back in. It might even be into '51, before she ever got out of the hospital, sir.

(Testimony of Edward Raymond Ege.)

Q. Well, now, what did you do after this period of time during which you played cards and made a dollar any way you could? How long did that situation last?

A. Well, through whatever period of time that I worked, which I think I have a record on social security, of when I worked.

Q. Where were you living during that time?

A. In Sacramento at 19 and S.

Q. And thereafter what did you do?

A. Thereafter? You mean when I came to San Francisco?

Q. Did you come to San Francisco from Sacramento? A. Yes.

Q. When was that?

A. Well, it was whenever the dates were, just shortly prior to—it might have been 30 days before I took Joseph Bruno's—Joe Boyd's home on 395 Monterey Boulevard.

Q. Well then, you were in Sacramento between 1950, about a year following the time you got out of the hospital, and 1953, about June, is that correct—or May, let's say, '53? You [288] spent that time in Sacramento, is that correct?

A. Yes, sir.

Q. And what were you doing during that time in Sacramento?

A. The same thing that I said I was doing before.

Q. Namely, what?

A. I said tending bar and playing cards.

(Testimony of Edward Raymond Ege.)

Q. Where did you stay when you first came to San Francisco about May, 1953?

A. I stayed in the Don Hotel.

Q. Did you have a room by yourself there?

Mr. Stout: That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Yes, I did. I had a room there by myself.

Q. (By Mr. Sparrow): And you testified, did you not, that you met Joseph Boyd at the Sarong Club about then, or shortly thereafter, is that correct? A. Yes, sir.

Q. And you never met——

A. I may have met him in the Sarong Club prior to my coming to San Francisco to go there as a—to buy an interest in the place and to go to work there.

Q. You were in——

A. We might have been a couple of acquaintances, at any time that I ever met Joe Boyd, because I knew him very vaguely, sir. [289]

Q. You were in the Sarong Club, then, before you moved down from Sacramento, is that right?

A. I was in it before I moved from Sacramento?

Q. Yes.

A. No, sir, when I came down to go to work, I brought clothes with me and I checked into the Don Hotel.

Q. And the first time you had ever been in the Sarong Club then was after you had come to San Francisco, is that right?

A. No, I had been in the Sarong Club prior to

(Testimony of Edward Raymond Ege.)

that. That's how I got knowledge of the fact that place was—a half interest of it—was for sale, and I got a deal to buy it.

Q. How much did you pay for that half interest?

A. I was to pay \$10,000 but I couldn't fulfill my part of the contract. I gave a thousand dollars. I was going to sell my car, and the sale of it, and after I went to work in the place and I didn't exactly like the situation and I tried to—I was trying to get out of the deal.

Q. Well, did you or did you not become an owner of a part interest in that place?

A. No, I didn't. I only give the man the money. I worked there as an employee until I could pay my part of what I had made, the contract to do.

Q. Now, do you recall the circumstances under which you met Mr. Boyd in the Sarong Club?

A. Just the fact that I guess I was drinking there and [290] talking with Mr. Lindsay and he introduced me to Mr. Boyd.

Q. And who is Mr. Lindsay?

A. He is the owner of the Sarong Club.

Q. Was he the one with whom you were to go into partnership? A. Yes, sir.

Q. Can you recall what was said in connection with the meeting, how did Mr. Lindsay happen to introduce you to Mr. Boyd?

A. Well, it's like in any bar, somebody knows this gentleman over here, and he says, "I would like you to meet this fellow here," and that's kind of an

(Testimony of Edward Raymond Ege.)

operation of bar owners to get people together to spend money. Isn't that right?

Q. Well, didn't you and Boyd have a conversation in connection with that meeting?

A. No, no conversation. I probably just—drink-talk like happens at any bar.

Q. Did you see him thereafter, after that first meeting in the Sarong Club?

A. He came in the Sarong Club a couple of times while I was working there.

Q. And you had some discussions with him then, did you?

A. He asked me if I needed a place to live and that he had a place which he was going to vacate and/or if I would like to buy some pieces of furniture, or something like that, that he was selling his furniture at the place. [291]

Q. And what did you say?

A. I told him no, that I wasn't interested at that time.

Q. Did you thereafter have any further discussions with him on that subject?

A. No. Somebody told me I should go out and look at his apartment that he had there because it was a nice place, and so I did go out and look at it, and it was a nice place, and so I took over his lease there.

Q. Did you have any discussions with him before doing that?

A. No, I didn't. In fact, I called to his house to see if he was there so that I wouldn't make a trip out there for nothing.

(Testimony of Edward Raymond Ege.)

Q. Did you reach him? A. Yes, sir.

Q. And what did you discuss then?

A. At the house?

Q. On the telephone.

A. What did we discuss on the telephone?

Q. Yes.

A. Oh, nothing. I discussed—asked him if he would be in in the next hour, that I would come out and take a look at the place.

Q. And then did you go out, did you?

A. Yes, sir, I did.

Q. Did you have a discussion with him then relative to [292] taking over the place?

A. Yes, I did.

Q. And what was the substance of that?

A. Well, how much the rent was and——

Q. How much was it?

A. \$125 a month, sir.

Q. And what else did you discuss?

A. There was no other discussion.

Q. Did you ask who the landlord was?

A. The gentleman who testified here, Mr. Giomi. Is that his name?

Q. Did you ask Mr. Boyd who the landlord was?

A. No, I don't believe I did. I think in the course of conversation he told me that the people that owned the place at Jean's Market.

Q. And what transpired after this conversation that you had with Mr. Boyd out at 395 Monterey?

(Testimony of Edward Raymond Ege.)

What did you do then with reference to getting the lease?

A. Well, we went over to Jean's Market and we talked to this fellow and Joe asked him if it was all right if I took over the lease, and he said it was fine with him, and he told him I was in the Sarong Club at 875 Geary Street, and he said, well, it was O.K. with him if I went ahead and took over his lease.

Q. So you and Boyd went to Jean's Market at Noriega Street [293] and had a discussion with Mr. Giomi, is that right?

A. If the place was on Noriega Street, that's where we went to, Jean's Market.

Q. Now, Mr. Ege, you state, do you not, that you never saw Mr. Bruno before these proceedings commenced, is that correct?

A. That is correct, sir.

Q. Did you ever talk with him?

A. I never had any discussion or ever met or ever knowed Mr. Bruno at any time prior to this court session that we are here right now.

Q. Never talked over the telephone with him?

A. I never had a conversation on the telephone.

Q. While you were at 395 Monterey Boulevard did you have occasion to make a telephone call to the city of Delano? A. No, sir.

Q. You never did?

A. I never had any occasion to call Delano, no.

Q. Would you say that a call was made from 395 Monterey Boulevard to Delano?

(Testimony of Edward Raymond Ege.)

Mr. Stout: Just a minute. That expects an answer on matters over which he would have no control, calls for his opinion and conclusion.

The Court: Objection sustained.

Q. (By Mr. Sparrow): Mr. Ege, did anyone else have the lease at 395 Monterey Boulevard besides yourself? [294] A. No.

Q. And who lived out there during the time—First of all, let me ask you, about when was it when you moved into 395 Monterey Boulevard?

A. Well, whatever the date was when the transfer took place.

Q. What do you recall?

A. It was sometime in June, I imagine.

Q. 19—— A. I don't remember exactly.

Q. 1953? A. Sir?

Q. 1953? A. Yes, it was in 1953.

Q. And how long did you stay there?

A. I stayed there until the termination of the lease and the people bought the place, and then I left.

Q. And when was that ?

A. You got me there. I think it was sometime in January.

Q. In what year? A. 1954.

Q. Now, who else lived with you out there at 395 Monterey Boulevard, if anyone?

A. Well, my wife.

Q. That's Gloria. Anyone else?

A. I had Constance Marie Bell—stayed there for a short [295] time. Judy stayed there some time.

(Testimony of Edward Raymond Ege.)

Other kids stayed there, a lot of kids stayed there. It was a big house.

Q. How many bedrooms did you have there?

A. Two bedrooms. We had a big couch.

Q. When you say "a lot of kids" stayed there, you mean a lot of girls stayed there, isn't that right?

A. I don't say a lot of girls. A lot of times fellows stayed there, too.

Q. Who stayed there?

A. Well, I can't recall the names right off.

Q. Did you pay the bills that were incurred in connection with your residence there in the house, such as electric light, telephone, gas, that sort of thing?

A. Yes, I did.

Q. So that——

A. Well, there was some times when people would make a phone call, or something like that, and they would give me the money for the phone call that they made.

Q. And when the telephone bill came in at the end of the month, I take it if it was a toll charge, there was a toll slip in there indicating the place to which the call was made, is that correct?

A. Correct.

Q. Now, do you recall in connection with paying the telephone bills and reviewing the toll calls at the end of the month, [296] in connection with paying the bills there, there were any calls placed either by you or anyone else from your telephone to the city of Delano?

(Testimony of Edward Raymond Ege.)

Mr. Stout: That is objected to on the ground incompetent, irrelevant and immaterial, not binding.

The Court: Overruled.

A. Repeat the question.

(Question read back by reporter.)

A. There could have been. I don't remember.

Q. (By Mr. Sparrow): By the way, what was your telephone number at 395 Monterey Boulevard?

A. It was Juniper 5-8777.

Q. Now, as a matter of fact, there were a number of long distance telephone calls placed to various parts of the state of California, and outside the state of California from that telephone on which toll charges were incurred by you, isn't that so?

Mr. Stout. Objected to as incompetent, irrelevant and immaterial, and possibly acts over which Mr. Ege had no control.

The Court: Overruled.

A. There could have been.

Q. (By Mr. Sparrow): As a matter of fact, on several occasions there were collect calls to that telephone number by a person giving the name of Cindy Martin, was there not? [297]

A. There was collect calls to that telephone number by Cindy Martin?

Q. By someone giving the name Cindy Martin.

A. To my knowledge, I don't think so.

Q. Or Cindy Marlow?

(Testimony of Edward Raymond Ege.)

A. I understood you. I said, "To my knowledge, I don't believe so." It could have happened.

Q. Now, do you know any people in Delano, Mr. Ege? A. Do I know any people in Delano?

Q. Yes. A. No, I don't.

Q. Do you know anybody named Betty in Delano? A. Betty?

Q. Betty.

A. No, I do not know a Betty in Delano.

Q. As a matter of fact, on November 27, 1953, there was a collect call to you from Betty at Delano giving the telephone number 9938, isn't that a fact?

A. No, sir, not to my knowledge.

Q. Would you say there wasn't such a call?

A. There could have been such a call. It wasn't for me.

Q. If it wasn't to you, would it be to your wife?

Mr. Stout: Objected to as calling for speculation, conjecture.

The Court: Sustained.

Mr. Sparrow: Do you know whether or not your wife knows anyone in Delano? A. Sir?

Q. Do you know whether or not your wife knows anyone in Delano?

A. My wife could know people in Delano.

Q. Beg your pardon?

A. My wife could know people in Delano. I don't know if she does.

Q. Do you know of your own knowledge whether she does know people in Delano? [299]

A. To my knowledge, I don't.

(Testimony of Edward Raymond Ege.)

Q. When was the last time that you saw Joseph Boyd in 1953 following your taking over his lease?

A. When I took over the lease.

Q. In other words, after you had seen Mr. Giomi, did you see Mr. Boyd again?

A. I don't believe so.

Q. And did you see him at any time during the rest of 1953 that you recall?

A. Yes. I saw Joe Boyd, but I can't recall the month, back here in San Francisco in the Sarong Club.

Q. In 1953? A. Correct, sir.

Q. Did you have a discussion with him at that time?

A. No, I don't think we had much of a discussion of any kind. Just, How are you, and that was all.

Q. When was the next time that you saw him?

A. I believe the next time I saw him was on July the 9th.

Q. 1954? A. 1955.

Q. 1955? A. Correct.

Q. Have you talked with Mr. Boyd at any time between the time you saw him some time in '53 in the Sarong Club following your taking over the lease at 395 Monterey and July 9, 1955? [300]

A. Had I talked with him?

Q. Yes. A. No, sir.

Q. Telephone or face to face, neither one, is that right? A. Neither.

(Testimony of Edward Raymond Ege.)

Q. And what was the occasion of your meeting with him on July 9th of this year?

A. He was at the bail bonds office when I arrived there or got released from the custody of the Marshal's Office.

Q. Did you have a discussion with him at that time? A. Yes, I did.

Q. And what did you talk about?

A. Well, he——

Mr. Stout: Excuse me. May I interject again? This would be incompetent, irrelevant and immaterial, not part of the issues of this case.

The Court: Overruled.

A. What the discussion was exactly about, he was telling me about this case.

Q. (By Mr. Sparrow): What did he say?

A. I don't recall the conversation.

Q. Then what did you say?

A. I just told him, "Joe, I'm not guilty of this crime I'm charged with," and that's all I said to anybody.

Q. Now, did you see Mr. Boyd at any time thereafter between [301] that meeting and the present time?

Mr. Stout: May the record indicate the continuous objection to this line of testimony?

The Court: The record will show.

Mr. Stout: Thank you, your Honor.

A. Yes, I saw Joe once in the Sarong Club and just had a drink with him.

Q. (By Mr. Sparrow): And, as a matter of

(Testimony of Edward Raymond Ege.)

fact, you talked about this case with him, didn't you?

A. I did not discuss the case at that time with him.

Q. When did you discuss it with him? If at all?

A. I haven't discussed this case with him at all.

Q. You have never discussed the case with him, is that correct?

A. No, I have not—or with anybody.

Q. As a matter of fact, you said to Mr. Boyd, words to the effect that you would appreciate it if he would say nothing about the telephone conversations that you and he had when he was in Scottsdale, Arizona, in the Fall of 1953 and you were in San Francisco, isn't that a fact?

A. You are very mistaken. I never made a statement like that to Mr. Boyd.

Q. You testified that your relationship with Constance Marie Bell ended. When was it that it ended?

A. When did my relationship end with [302] her?

Q. Yes.

A. Well, I guess she was in and out, around, she would be there at the house. I think she was there at the house a couple of times and stayed there maybe, possibly all total not more than three weeks at any time, and I don't think it was more than two weeks, but I'll stretch the point.

Q. She was there on more than one occasion, is that right?

A. Yes.

(Testimony of Edward Raymond Ege.)

Q. When was it that this relationship ended?

A. What do you mean, when did it end?

Q. Well, you used the words in response to a question by Mr. Stout that your relationship with Constance ended. I just want to know when it ended?

A. Well, I never saw her any more. I think I saw her once in January, and I think that's the last time I saw her.

Q. January, 1954? A. 1954, yes, sir.

Q. And where was it that you saw her?

A. She called me at the house and come out.

Q. Where was that?

A. At 395 Monterey Boulevard.

Q. And how long did she stay on that occasion?

A. Oh, she just come out and talked, seem to be lonesome.

Q. How long did she stay? [303]

A. How long did she stay? I didn't watch the clock, but I'll say that she wasn't there very long.

Q. Overnight?

A. No, sir, just—in the afternoon. It could have been an hour, and it could have been an hour and a half. It might even be two hours.

Q. Now, you said you never took Constance Marie Bell anywhere in an automobile except maybe to San Rafael. What was the occasion of your taking her to San Rafael?

A. She had a soldier boy friend in San Rafael who she liked to go see, and I sometimes took her over there as a favor, to Constance Marie Bell.

(Testimony of Edward Raymond Ege.)

Q. And in what car did you take her over?

A. I took her over in the Cadillac.

Q. Now, you talked—you had occasion to be interviewed in connection with this matter by a special agent of the Federal Bureau of Investigation, have you not?

A. You are very correct, sir.

Q. And that was in Sacramento?

A. That is correct.

Q. And it was in September, 1954, was it not?

A. Let's see, it could have been September, 1954, yes.

Q. And do you recall the name of the agent?

A. It was an agent, I believe his name is Malone. The other agent's name I don't recall. [304]

Q. And were you interviewed by Mr. Malone on more than one occasion?

A. Two times.

Q. Two times?

A. Mr. Malone—the last time that—it wasn't an interview; he come and told me what was going to happen and the procedure, that the marshal's office will come and what will happen to me, and there was no discussion of the case, except he asked me if I had any statement to make. And I said, "Mr. Malone," I said, "I am not guilty of this crime that I am charged with."

Q. As a matter of fact, Mr. Ege, on the occasion of that first interview, which was on or about September 16, 1954—would you say that was about right?

A. Correct.

Q. And on the occasion of that first interview, you denied to Mr. Malone, did you not, that you

(Testimony of Edward Raymond Ege.)

named anyone named Constance Marie Bell or Mildred Berg, is that correct?

A. I denied knowing Constance Marie Bell or Mildred Burke (sic).

Q. And on the second interview, you had occasion to make a similar denial, did you not?

A. Beg your pardon?

Mr. Stout: May I have the question read, please?

The Court: Read it, Mr. Reporter. [305]

(Question read back by the reporter.)

A. That's correct. I might add, if I can, I never knew a Constance Marie Bell or a Mildred Burke (sic).

Q. (By Mr. Sparrow): And when was the occasion of this second interview?

A. Oh—now, you're right. The man come and then he come back and showed me some pictures and he asked me if I know these girls and I said I do not recognize them by their pictures.

Q. As a matter of fact, you declared that you did not recognize them, did you not, on that occasion? A. That's right.

Q. It is now your testimony that you said to him that you, after seeing the pictures, you did not recognize them? Is that right?

A. When I saw the pictures, I told him I did not recognize those pictures.

Q. Now, you had a discussion on the occasion of the first visit of Mr. Malone; on that occasion

(Testimony of Edward Raymond Ege.)

you stated that you did not know your wife, Gloria, was living. A. That's correct.

Q. And you did not know what she was doing, is that correct? A. That's correct.

Mr. Stout: Just a moment. Excuse me. May the answer be stricken pending the objection, Your Honor, just so that I may make it for the record? [306]

The Court: Make your objection.

Mr. Stout: That any statement with reference to his knowledge of his wife's occupation, of that nature, would not be relevant or material at this time.

The Court: The objection is overruled and the motion is denied.

A. Will you ask the question again?

Mr. Sparrow: May we take the recess at this time?

The Court: We will take the usual afternoon recess, ladies and gentlemen.

(Recess.) [307]

Q. (By Mr. Sparrow): Did you have any children, Mr. Ege? A. No, sir.

Q. I beg your pardon? A. No, sir.

Q. By the way, what was Rosalind's last name?

A. I don't remember.

Q. Did you know her name at one time?

A. I beg your pardon, sir?

Q. Did you know at one time?

A. Yes, I knew Rosalind. She was a girl that was around Sacramento.

(Testimony of Edward Raymond Ege.)

Q. Would her name be Sauber?

A. That is her name, Rosalind Sauber.

Q. Under what name was Constance Marie Bell introduced to you?

A. Cynda Marlow.

Q. Cynda Marlow?

A. Yes, sir.

Q. You have also know her to use the name Martin as well, have you not?

A. Martin? No, sir, I never did.

Q. Would you say she never to your knowledge used that name?

Mr. Stout: Objection, if your Honor please.

The Court: Overruled.

A. To my knowledge she never used that name. [308]

Q. (By Mr. Sparrow): Were there any collect telephone calls received at 395 Monterey Boulevard by a person named Cindy or Cynda Martin?

A. No.

Mr. Stout: Excuse me; was that Cinda, C-i-n-d-a? I can't tell.

The Court: Did you say Cindy or Cinda?

Mr. Sparrow: I said Cynda, C-y-n-d-a.

The Witness: That is not—I never received any collect calls by anybody by that name.

Q. (By Mr. Sparrow): Did you pay telephone bills at 395 Monterey Boulevard as a result of a call to that address by anyone by that name?

A. Not to my knowledge.

Q. Would you say that you had never paid such a bill?

A. Well, I paid the phone bill there; I don't be-

(Testimony of Edward Raymond Ege.)

lieve it says on the phone bills who the calls come from.

Q. As a matter of fact, on December 21, 1953, there were two calls, collect calls, from Barstow, California, to 395 Monterey Boulevard, the first in the name of Sandy Martin and the second in the name of Cynda Martin; isn't that so?

A. What dates were those phone calls made?

Q. December 21, 1953.

A. I never received any phone calls from Barstow at any time from anybody. [309]

Q. Did you pay any telephone bills on such calls?

A. If I did, I don't remember the call coming in.

Q. Do you remember where you were on December 21, 1953?

A. I believe on the 21st or 22nd I was in Las Vegas, Nevada.

Q. And when did you arrive in Las Vegas, Nevada? A. About that time, about the 21st.

Q. And from where did you come to Las Vegas?

A. From San Francisco.

Q. When did you leave San Francisco?

A. I don't remember what time I left San Francisco.

Q. Was it early in the month of December, the middle of the month, or before?

A. Oh, I left—it was approximately at the date, around the 21st.

Q. What route did you take from San Francisco to Las Vegas? A. I went by Reno.

Q. I beg your pardon?

(Testimony of Edward Raymond Ege.)

A. I went by Reno.

Q. By what? A. By Reno, Nevada.

Q. By way of Reno?

A. Highway 40 and down the desert.

Q. What were you driving?

A. A Cadillac.

Q. Did you spend the night in Reno? [310]

A. No, I did not.

Q. Did you spend the night anywhere en route between San Francisco and Las Vegas on that occasion? A. I did not.

Q. You drove right straight through; is that right? A. Yes, sir.

Q. Was anyone with you?

A. There was no one with me.

Q. How long did you stay at Las Vegas?

A. I was in Las Vegas until the night of the 24th or the 25th.

Q. And you place that by Christmas Day; is that correct? A. Correct.

Q. Where did you spend Christmas?

A. I spent Christmas in San Francisco.

Q. So you couldn't have left Las Vegas on the 25th, is that right, unless you had a very early start in the morning?

A. No, they have a flight that leaves Las Vegas.

Q. You flew back from Las Vegas to San Francisco? A. That's right, yes, sir.

Q. Where did you leave your car?

A. I left the car—it wasn't my car; I took the

(Testimony of Edward Raymond Ege.)

car to a person who owned the car in Las Vegas, and was the purpose of my trip going there.

Q. Did you see Constance Marie Bell while you were in Las—— [311]

A. I beg you pardon, sir?

Mr. Sparrow: Do you want to read the question, Mr. Reporter?

(The reporter read the question.)

A. I did not.

Q. (By Mr. Sparrow): In whose name was the car registered which you say you left in Las Vegas?

A. That car was registered in my name.

Q. With whom did you leave it in Las Vegas?

A. With a girl named Mary Fergundez.

Q. Where did she live?

A. She lived in Las Vegas.

Q. Whereabouts?

A. I don't know where she lived.

The Court: By the way, when did you say you got out of the hospital?

A. In '49, some time.

Q. From there you went to Sacramento and worked as a bartender; is that right?

A. Yes, sir.

Q. And according to your testimony you were picking up a dollar here and there the best you could; is that right?

A. Correct, sir.

Q. And you went to work for the Buffalo Club which was a card club at 19th and S Streets, is that right? [312]

(Testimony of Edward Raymond Ege.)

A. No, I worked in the card club before I went into the hospital.

Q. Before you went into the hospital?

A. Yes.

Q. You worked at the Sacramento Hotel after you got out of the hospital?

A. No, I worked at the Sacramento Hotel after I was discharged from the service.

Q. What did you do immediately after you got out of the hospital?

A. Immediately I was discharged from the hospital I went to Sacramento and went in the Double Play bar which was on Riverside Drive.

Q. Were you working on a salary there?

A. Well, I was getting a salary and 50 per cent of the profit.

Q. Was that a monthly salary or weekly salary?

A. It was paid by the week.

Q. How much did you make?

A. Well, whatever the bartenders' scale was at that time.

Q. Well, what was it—\$15 a day, \$12 a day? What is your best recollection?

A. Well, now, to go back, I think that I had a drawing account of \$50 a week, and then anything that was drawn over and above that, we would cut it up at the end of the month if [313] there was a profit, or if I needed more money I just drew it, and at the end of the year when I got the 502 form it showed what I had earned there.

(Testimony of Edward Raymond Ege.)

Q. What was your average take-home pay per month? A. Sir?

Q. What was your average take-home pay per month? A. I would say approximately \$300.

Q. Did you have any other source of income?

A. Yes, sir, I got \$200—well, I got \$196.50 from the United States Government.

Q. About this Cadillac car—did you originally purchase that car?

A. In 1950 Cadillac car I purchased.

Q. And were you buying it on time or did you buy it outright? A. I bought it on time, sir.

Q. What was the amount of your payments per month? A. Gee, I don't remember.

Q. Do you remember how much of a down payment you made on it?

A. Well, I had a '48 Cadillac car that I traded in for that, sir.

Q. Do you remember how much you got for that?

A. I believe there was \$1800 difference.

Q. What was the purchase price of the 1950 Cadillac?

A. Well, what the purchase price of the '50 Cadillac was I can't recall, but I know there was \$1800 difference in the two [314] cars.

Q. I am interested in knowing and finding out because it is a little confusing. You say that you drove this Cadillac to Reno?

A. It wasn't that Cadillac.

Q. Oh; it was another Cadillac?

A. Yes, sir.

(Testimony of Edward Raymond Ege.)

Q. Did you own that one? A. No, sir.

Q. What did you do with your own Cadillac when you drove this one to Las Vegas?

A. I left it in San Francisco.

Q. You left it in San Francisco? A. Yes.

Q. In other words, you came down here in your own Cadillac?

A. To San Francisco, yes, sir.

Q. And then picked up this Cadillac?

A. No, this Cadillac was here. It was purchased by me for somebody else because of the fact that they couldn't get credit, so they asked me if they could use my name. I said yes, it was all right, and they purchased a 1952 Cadillac.

Q. And the Cadillac was in your name, was that right?

A. The Cadillac was in my name until such a time when I took it and give it to the people in Las Vegas where they could take it over for themselves at that time. [315]

Q. And then you drove your Cadillac down to San Francisco and picked up the '52 Cadillac?

A. I get pardon?

Q. You drove your Cadillac to San Francisco?

A. That's right.

Q. From Sacramento? A. Yes, sir.

Q. You left your Cadillac here, did you?

A. Correct, sir.

Q. Where did you leave it?

A. At 395 Monterey Boulevard.

Q. And then you went and got the 1952 Cadillac?

(Testimony of Edward Raymond Ege.)

Is that right? A. Yes, sir.

Q. Then you drove back through Sacramento over to Reno; is that right? A. Correct.

Q. And then down through Tonopah, through Bady, into Las Vegas? A. Correct, sir.

Q. For the purpose of leaving it with the person who really owned it; is that right?

A. That is correct.

Q. What was his name?

A. It was Mary Fergundez; it was a girl. [316]

The Court: All right.

Q. (By Mr. Sparrow): And you don't know where Mary Fergunez lives; is that right?

A. No, sir. Oh, I know where she lived in Sacramento. [316A]

Q. Where did she live in Las Vegas?

A. She was staying at the Roxy Motel.

Q. You delivered it to her there, is that right?

A. No, I didn't deliver it to her there. I met her in a bar.

Q. During the fall of 1953, Mr. Ege, did you have occasion to make a visit to Barstow?

A. I had no occasion to make a visit to Barstow.

Q. Is it your testimony that during the fall of 1953 you never visited the town of Barstow; is that correct? A. That is correct.

Q. And did you pay any visits during the fall of 1953 to the County of Yolo? A. I did not.

Q. It is your testimony that at no time during the fall of 1953 did you go to the County of Yolo?

A. No.

(Testimony of Edward Raymond Ege.)

Mr. Stout: Well, excuse me. Is that what you mean?

Mr. Sparrow: Pardon me. I think the answer was perfectly understood, and it was made.

Q. Now, my next question is, how about a trip to Tulsa?

Mr. Stout: May I be heard?

The Court: Do you have an objection?

Mr. Stout: Yes, Your Honor. I feel that the question was ambiguous, because included within it, from my knowledge [317] of the road between here and Sacramento——

Mr. Sparrow: It isn't your knowledge, Mr. Stout.

Mr. Stout: It goes along through Yolo County, so that if you're going between here and Sacramento, per se, you do go through Yolo County.

The Court: I think the question was capable of being fully understood. I think the witness understood it and so answered.

A. I could have went through Yolo County. If you mean by visiting it, did I pass through it. I thought you meant, did I spend time at any specific place in Yolo County. If that is what you meant, I did not stop at any specific place in Yolo County.

Q. (By Mr. Sparrow): Mr. Ege, did you make a trip during the fall of 1953 to Folsom, California?

A. Yes, I did.

Q. On more than one occasion?

A. Yes, I made a couple—two or three trips there.

(Testimony of Edward Raymond Ege.)

Q. Do you recall where they were?

A. Yes, they were to the place in Folsom, California.

Q. Do you remember when?

A. It was between October the 1st and the last part of October.

Q. And who would you see there at the house, if anyone?

A. I saw Barbara Reynolds. [318]

Q. And how long did you stay?

A. Well, I was there in the afternoon and did some carpentry work in the place and a little work around the place that Miss Reynolds would like to have fixed that she couldn't do by herself.

Q. How much rent did Miss Reynolds pay you?

A. On this occasion Miss Reynolds didn't pay me anything.

Q. Mr. Ege, during the fall of 1953, were you ever in the City of Fresno?

A. In the City of Fresno in the fall of 1953?

Q. Yes; by that I mean, any time in September, October, November or December.

A. Yes, I made a trip to Fresno.

Q. On more than one occasion?

A. Not that I can recall.

Q. And when was the occasion of that one visit that you made?

A. When Constance Marie Bell called me and asked me if I would come down and pick her up and bring her to San Francisco.

Q. So you did do that; is that correct?

A. Yes, I did.

(Testimony of Edward Raymond Ege.)

Q. So that that was one more occasion other than San Rafael on which you had occasion to take her on a trip?

A. You're right. I overlooked the fact I brought her from Fresno to San Francisco. [319]

Q. And other than the visit which you have just described, to Las Vegas, did you have occasion during the fall of 1953 to make other visits to Las Vegas?

A. Did I make any other visits to Las Vegas other than——

Q. Other than the one you have just testified to?

A. Yes, I did.

Q. And when was that?

A. The exact month—around March, 1954, it was.

Q. My question was, Mr. Ege, during the fall of '53, other than that occasion, that one that you have just testified to. Did you have occasion to go to Las Vegas? A. No, sir.

Q. So that one visit in December, 1953, was the only one that you made in the fall of that year to Las Vegas; is that correct?

A. No. In the fall—yes, possibly; I would answer that question yes.

Q. What airline did you come back from Las Vegas via? A. TWA.

Q. Did you make any stops en route?

A. No, sir, they have a direct flight.

Q. It lands in San Francisco Airport, is that correct? A. Correct.

(Testimony of Edward Raymond Ege.)

Q. How long have you known Mary Fagundes?

A. I have known Mary Fagundes for several years. [320]

Q. When did you first meet her?

Mr. Stout: Excuse me, Your Honor, please. This is objected to on the ground it is irrelevant and immaterial and beyond the scope of this indictment.

The Court: Overruled.

Mr. Stout: If this line of questions is to continue, may the record note a continuous objection?

The Court: The record will note that.

Mr. Stout: Thank you.

The Witness: Pardon; could I have the question?

Mr. Sparrow: Would you read it, Mr. Reporter?

(Reporter read the last question.)

A. I would say that I met her for the first time sometime in 1949.

Q. And whereabouts?

A. In and around Sacramento.

Q. Do you remember the occasion of your first visit, who introduced you and why you were?

A. No, I think we were all just drinking in a bar and we got acquainted.

Q. How many times did you see her thereafter between 1949——

A. I saw Mary Fagundes quite a few times; I can't remember the occasions.

Q. Where did you see her?

A. In different places. [321]

(Testimony of Edward Raymond Ege.)

Q. Such as where?

A. I saw her in Las Vegas.

Q. And did you see her at any time—you mean in Las Vegas in December of '53?

A. No, I saw her other times in Las Vegas.

Q. Other times in Las Vegas?

A. Yes, she was there quite some time.

Q. Living at Roxy's Motel on the other occasions? A. Correct.

Mr. Stout: Just a minute. The question was objected to on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Sparrow: No further questions.

Mr. Stout: I have no further questions, Your Honor.

The Court: Do any of you gentlemen wish to be heard?

Mr. Campbell: I understood that we had rested, your Honor.

The Court: I know, but I don't want to preclude you from asking any questions of this witness.

Mr. Campbell: We don't want to be bound by his testimony, either cross or direct.

Mr. Hagerty: That is our position, too, Your Honor, on behalf of the defendant Boyd.

Mr. Stout: The defense on behalf of Mr. Ege rests. Step down, Mr. Ege.

The Court: Any further testimony? [322]

Mr. Sparrow: No, Your Honor.

Mr. Stout: Did I understand that the government rested?

Mr. Sparrow: Yes.

The Court: The record discloses that all sides have rested; is that right?

Mr. Stout: Yes, Your Honor.

Mr. Sparrow: Yes, Your Honor.

The Court: Ladies and gentlemen of the jury, you will now be excused until 10:00 o'clock tomorrow morning at which time we will have the arguments and the instructions of the Court, and then you may proceed with your deliberations after that. In the interim, of course, you are again instructed not to discuss the case and not to form or express any opinion about it until it is submitted to you. You may retire at this time, because I have some other matters to take up with counsel.

(Thereupon the jury retired from the courtroom.)

Certificate of Reporter

I (We), Official Reporter(s) and Official Reporter(s), pro tem, certify that the foregoing transcript of 323 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ W. A. FOSTER,

/s/ WM. A. CARR,

/s/ J. P. SWEENEY.

Thursday, September 29, 1955

(Closing arguments made to the jury.)

INSTRUCTIONS TO THE JURY

The Court: Let the record show, Mr. Reporter, that I have prior to the arguments of counsel given to respective counsel the instructions that I propose substantially to give in accordance with the provisions of Rule 30 of Our Rules of Criminal Procedure.

Ladies and gentlemen of the jury, you have listened with commendable attention to the evidence as it has come to you from the mouths of the various witnesses who have appeared before you during the trial of this case. I want you to know that this Court is appreciative of the earnestness which you have demonstrated in the performance of your sworn duty as jurors, and I assure you, therefore, that you have the gratitude and the commendation of this Court for the very properly serious and conscientious manner in which you have proposed these, your most important duties as citizens.

As I have indicated to you, it now becomes my duty to state to you the law that is applicable to the facts and which must guide you and govern you in reaching your conclusion upon the evidence which has been presented to you in this case.

You know, ladies and gentlemen, the Court and the jury work as a sort of a team. You judge the facts, and it is my [324] duty to give you the law. It is your duty, reciprocally, to accept the law as it

is given to you by me as the law of the case. You are the exclusive judges of all questions of fact and whereas the law provides that in a case of this character the federal judge, if he so desires, may comment upon the evidence, I do not desire to do so at this time. You have heard the evidence as well as I have and I consider you to be just as competent to arrive at a conclusion in this case as I would be. So, therefore, I do not desire to comment at this time upon the evidence. You are the sole judges of the weight of the evidence and the credibility of the witnesses. But to reiterate as to the principles of law which are governed, you are to be governed by the instructions of this Court and not otherwise.

So therefore at the very outset I charge you that you must not consider for any purpose whatsoever any testimony or evidence which has been by order of the Court stricken out. Such testimony or evidence should be treated by you as though you had never heard it.

Now, again, you will distinctly understand that in this charge, in these instructions that I am about to give you, I do not express in any manner or form, nor do I desire to express, any opinion upon the weight of the evidence or any part thereof, nor do I express any opinion as to the truth or falsity of the testimony of any witness who has been sworn in [325] this case.

It may have occurred during the trial of this case that the Court has been called upon to make certain comments and ruling upon the objections of counsel and upon motions made by them. You should

not draw any inference from any such remarks or comments or rulings or the Court that I may have had occasion to make that this Court was intending to convey to the jury in any manner whatsoever its view or opinion as to what the verdict or decision of the jury should be. Such comments as I may have had occasion to make in that regard were only pursuant to the power and, indeed, the duty of the Court to supervise the trial of this case and to expedite it.

So therefore with the questions of fact, the weight of the evidence, the credit that you should give to any witness sworn in the case, again, the Court expresses no opinion because these are matters which are entirely within your province and which you as jurors under your solemn oaths must determine for yourselves.

My duty is simply to announce to you such general principles of law as are applicable to the case based upon the testimony that you have heard as concisely, as expeditiously, as is consistent with my duties and the importance of the issues which are here involved.

So therefore, if in stating to you any proposition of law I have assumed any fact as proven, you are to disregard such [326] assumption and deduce your own conclusion from the evidence.

Further, if I, as the judge of this Court, have at any time during the trial of this case used any language or have seemed to you to indicate my opinion as to any question of fact or as to the credibility of any witness, you must not be influenced thereby

but you must determine for yourselves all questions of fact without regard to the opinion of anyone else.

It has been your duty, ladies and gentlemen, to listen patiently, as you have done, and attentively, as you have done, to all the evidence in the case and to the arguments of counsel, and may I respectfully suggest to you that you give to me the same undivided attention that you gave to counsel during the course of the trial, in order that I might assist you in arriving at a just and proper conclusion of this case.

Now, while it was your duty to listen to and consider the arguments of the attorneys in this case, I instruct you that such arguments are not evidence, and that the only legitimate purpose of the arguments of the attorneys is to assist you in arriving at a proper verdict from the evidence in the case, applying to such evidence the law as given to you by the Court.

Now, the defendant Edward Raymond Ege alone is charged by the Grand Jury in the first count of the indictment, as supplemented by a bill of particulars, with knowingly transporting Constance Marie Bell in interstate commerce, from San [327] Francisco, California, to Scottsdale, Arizona, for the purpose of prostitution on or about the 17th day of October, 1953. This first count of the indictment charges a violation of the White Slave Traffic Act, which is incorporated as Section 2421 of Title 18 of the United States Code. Now, insofar as pertinent, this section reads as follows:

“Whoever knowingly transports * * * in inter-

state commerce * * * any woman or girl for the purpose or purposes of debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practice'' (shall be guilty of a crime against the United States).

Now, the term "interstate commerce," as used in Section 2421, which I have just read to you, includes transportation from any State * * * to any other State.

The transportation prohibited by Section 2421 includes transportation by means of private automobile, or any other vehicle.

The White Slave Traffic Act makes it a crime to transport a woman or a girl in interstate commerce for the purpose of prostitution or debauchery. It is directed at the transportation of females in interstate commerce for such illicit [328] practices, and it has for its purpose the prevention of the use of interstate commerce as a calculated means of effectuating immoral conduct of that kind.

In order to find the defendant Ege guilty of the charges contained in the first count of the indictment, you, the jury, must find, beyond a reasonable doubt: (1) that he knowingly transported Constance Marie Bell, or caused her to be transported, in interstate commerce, for the purpose of prostitution and with the intent and purpose that Constance Marie Bell practice prostitution or other immoral practices.

It is not necessary for the Government to establish the previous good moral character of the girl alleged in the indictment to have been transported in interstate commerce by the defendants in violation of the statute. It is immaterial in this case whether or not she had engaged in the practice of prostitution or any other immoral activities prior to her alleged transportation in interstate commerce. The White Slave Traffic Act applies equally to the transportation in interstate commerce of prostitutes or persons of previous chaste moral character.

An essential element of the offense charged is an intent and purpose of the defendant that the woman transported in interstate commerce shall engage in such immoral conduct, and if a defendant has not that necessary intent and purpose and motive, he cannot be found guilty of the offense. [329]

It is not necessary that a defendant actually transport the woman himself, or that he shall actually procure the tickets or arrange the transportation. It is sufficient if the defendant causes the woman to be transported or aids or assists in obtaining her transportation for the purpose set out in the statute.

One who deliberately aids or deliberately brings about the interstate transportation of a woman for immoral purposes, is as guilty of the offense of transporting her as though he had physically and personally carried her across the state line.

It is not necessary to a conviction that the sole and single purpose of the transportation of a woman in interstate commerce be the purpose of prostitu-

tion for other immoral purposes. It is enough that one of the dominant purposes was prostitution or debauchery. It is sufficient if one of the essential and compelling purposes in the mind of the defendants in the particular transportation was illicit conduct of that kind.

Now, the second count of the indictment charges all defendants, that is to say, Edward Raymond Ege, Joseph Boyd and Joseph Victor Bruno, with violating Title 18, United States Code, Section 371, in that they, and each of them, conspired together to transport women in interstate commerce between California and Arizona and between California and Nevada, for [330] the purpose of prostitution.

Accordingly, if you find beyond a reasonable doubt that the defendants conspired together to transport women, including Constance Marie Bell, in interstate commerce for the purpose of prostitution, and that any one of the overt acts charged was done in furtherance of the conspiracy, it is your duty to convict. The overt acts charged to have been done in furtherance of the conspiracy, as supplemented by a Bill of Particulars are as follows:

1. On or about June 15, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. On or about September 15, 1953, defendant Edward Raymond Ege took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern

District of California, to 395 Monterey Boulevard of said city.

3. On or about September 15, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. On or about October 13, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and [331] Northern District of California.

5. On or about October 20, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. On or about October 22, 1953, Constance Marie Bell, in the State of Arizona, had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. On or about October 22, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. On or about October 25, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. On or about October 27, 1953, defendant Jo-

seph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. On or about November 5, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.

11. On or about November 10, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and [332] County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. On or about December 7, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. On or about December 20, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. On or about December 22, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

Now, you are instructed, ladies and gentlemen, that mere association does not make a conspiracy. In order to find the defendants guilty of the conspiracy charged, you must be satisfied beyond a reasonable doubt that they together formed a common purpose and design to transport women from one state to another for purposes of prostitution, and

that at least one of the overt acts charged was done in furtherance of that design.

Common design is the essence of conspiracy.

However, it is not necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or [333] that they should directly by words or in writing state what the unlawful scheme was to be and the details of the plan by means of which the unlawful plan or combination was to be effected. It is sufficient that two or more persons in any manner or through any contrivance positively or tacitly come to a mutual understanding to accomplish the common and unlawful design charged in the indictment. In other words, where an unlawful end is sought to be effected and two or more persons, actuated by a common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one and was to be executed at a remote distance from the other conspirators.

The evidence must convince that the defendants did something other than participate in the substantive offense which is the subject of the conspiracy; that is, the evidence must show beyond a reasonable doubt a common purpose or design.

If the evidence of the separate details of the transaction as it was carried out indicates with the requisite certainty the existence of a preconceived

plan and purpose, that is sufficient to permit you to infer that the illegal agreement charged was in fact entered into.

You are instructed that the evidence must establish the conspiracy charged; evidence that establishes another [334] conspiracy or several other conspiracies will not sustain a verdict.

An overt act need not be criminal in nature, if considered separately and apart from the conspiracy; it may be as innocent as the act of entering a house or a night club or driving an automobile, or using a telephone. But, if, during the existence of the conspiracy, the overt act is done by one of the conspirators to effect the object of the conspiracy, the crime is complete, and it is complete as to every party found by you to be a member of the conspiracy, no matter which one of the parties do the overt act.

It is not necessary, as I have indicated, that all the overt acts charged be proved, but it is necessary that at least one of these be proved and that it be shown to have been in furtherance of the object of the conspiracy. Other overt acts than those charged may be given in evidence, but proof of one of those charged in the indictment is indispensable.

The time and place of the formation of the conspiracy are material, provided any of the overt acts were committed within the jurisdiction of this Court, on or about the respective dates alleged. The Government may have no exact knowledge of the time or place of the formation of the conspiracy, and to require it to specify the particular time and

place would defeat almost every prosecution under this act.

To render a person criminally liable as a conspirator it [335] is not necessary that he received any pecuniary advantage or benefit from the conspiracy or that he joined the conspiracy with the view of obtaining a pecuniary advantage or benefit.

You are instructed that it is not incumbent upon the Government to prove the precise dates upon which the offenses were alleged to have been committed, it being sufficient for the purposes of this case that it is shown that the offenses were committed within the past five years.

The question of intent is a matter for you, as jurors, to determine, and, as intent is a state of mind it is not possible to look into a man's mind to see what went on, the only way you have of arriving at the intent of the defendants in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, and determine from all such facts and circumstances what the intent of the defendants was at the time in question.

You are here to determine the guilt or innocence of the defendants from the evidence before you. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So if the evidence convinced you beyond a reasonable doubt of the guilt of the defendants, you should so find even though you may believe one or more other persons are also guilty.

On the other hand, if any reasonable doubt remains in your minds after impartial consideration

of all the evidence, [336] you should acquit the defendant.

The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

The intent required to be proved in order to convict a defendant of the offense charged in the indictment is not only an intentional conspiracy, knowingly and wilfully to transport women between California and Arizona and Nevada, but also the further specific intent that such women engage in prostitution as a result of such transportation.

Mere knowledge of an unlawful conspiracy is not sufficient to make one a member thereof. He must actively participate therein; he must do something in furtherance thereof before he is liable as a member.

Before you may find that a defendant has become a party to or a member of a conspiracy, it must appear from the evidence beyond a reasonable doubt that such conspiracy was formed and that the defendant wilfully participated in the unlawful plan with specific intent to further the common design or purpose.

Now, to participate wilfully means to participate voluntarily and purposely and with specific intent to violate the law, or with reckless disregard as to whether or not the act is a violation of the law. That is to say, if a person—with understanding of the unlawful character of a plan—intentionally encourages, advises or assists with the purpose [337] of furthering the enterprise or scheme, he becomes a wilful participant, a conspirator. [337A]

Mere similarity of conduct among various defendants and the fact that they may have associated with each other and may have met together and discussed common aims and interests does not necessarily establish the existence of a conspiracy.

One may become a party to or a member of a conspiracy without full knowledge of all the details of the conspiracy or of the means to be used. The person, however, who has no knowledge of a conspiracy but happens to act in a way which furthers an object of the conspiracy does not thereby become a conspirator. As stated before, there must be some wilful participation with the intent to further the common purpose or design.

In order to establish, as to any individual defendant, the offense of conspiracy charged in the indictment, the evidence must show beyond a reasonable doubt:

First, that the conspiracy described was formed at or about the time alleged;

Second, that the accused knowingly and wilfully became a party to or a member of the conspiracy;

Third, that the accused, while a member of the conspiracy, had the specific intention to transport or cause to be transported women between California and Arizona or between California and Nevada for the purpose of prostitution;

Fourth, that one of the conspirators thereafter knowingly [338] committed at least one of the overt acts charged in the indictment;

Fifth, that such overt act was committed in furtherance of an object or purpose of the conspiracy;

Sixth, that the accused himself must have actively participated in the conspiracy by doing something in furtherance thereof.

If you find that any one of these six elements have not been proven beyond a reasonable doubt as to any defendant, then you must find the defendant "Not Guilty."

All evidence of a witness whose self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused should be considered with caution and weighed with great care.

All evidence relating to any admission or incriminatory statement claimed to have been made by defendant outside of Court should be considered with caution and weighed with great care.

Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon a failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing [339] any evidence.

An accomplice, ladies and gentlemen, is one defined as to be one concerned with another or others in the commission of a crime. It is settled law in this country that even accomplices are competent witnesses and that the government has the right to use them as such. It is the duty of the Court to admit their testimony, and it is the duty of the jury to consider it.

The testimony of an accomplice, however, is always to be received with caution and weighed and scrutinized with great care.

If you find from the evidence that Constance Marie Bell took part in the commission of the crime or aided in the commission of the crime with intent to assist in its commission, she was an accomplice.

The defendant, Edward Raymond Ege, as you know, is charged in the indictment with two separate and distinct counts. You must consider each count separately as though each was set forth in a separate indictment, and in order to convict or acquit the defendant on any count, you must reach a unanimous verdict as to each count. It will take all twelve of you to convict or acquit, as the case may be, on each count. If you agree upon a verdict on the offense charged in one count of the indictment, but are unable to reach an agreement on any offense charged in any other count [340] thereof, you should return in Court the verdict upon which you have agreed.

Although the indictment in this case charged three defendants with the offenses set forth therein, you are instructed that you must determine the guilt or innocence of each defendant in this case as if he were the only defendant on trial. Each defendant has the right to have you consider his individual guilt or innocence independently from the guilt or innocence of the other defendants in the case.

The defendant Edward Raymond Ege is separately charged with violation of Title 18, U. S. Code,

Section 2421. I am repeating this because it is important. Specifically, he is accused of knowingly transporting in interstate commerce from San Francisco to Scottsdale, Arizona, a woman known as Constance Marie Bell for the purpose of prostitution. Prostitution means that a woman knowingly submits her body promiscuously for hire.

One of the essential elements of this crime is that the defendant Ege have the specific intent, purpose and motive of transporting the named woman in interstate commerce for the purpose of prostitution. This specific intent, purpose and motive must be found by you to have existed in defendant Ege's mind prior to having the woman go from San Francisco to Scottsdale, Arizona. In order to convict the defendant, it is not necessary that you find that the sole and single [341] purpose of the woman's trip was for the purpose of prostitution. It is enough that prostitution was one of the efficient and compelling purposes or reasons.

In this trial there have been instances when evidence was admitted which may properly be considered by you only against some of the defendants and not against others. And I shall now instruct you as to the manner in which you must do so.

You are not to consider any statement or statements made by one defendant out of the presence of another defendant as evidence against such defendant. Thus, for example, the statements made by Boyd in Scottsdale, Arizona, are not to be considered by you as against Ege and Bruno. Nor are any conversations had between Ege and Boyd in San

Francisco to be considered by you as evidence against the defendant Bruno. Nor are any activities of Bruno in Delano or Bakersfield to be considered by you as evidence against Ege or Boyd.

However, there is an exception to the rule that I have just given you. The law allowed the statement and admissions of one conspirator to be admitted against his fellow conspirator if the statement is made by one of them in furtherance of the conspiracy. Therefore, if and only if you first find that there was a conspiracy in existence at the time of the statement and that the statement was made by one of the conspirators in furtherance of the conspiracy, then you may [342] regard it as evidence against every other person whom you may have found to be a member of the conspiracy at the time of the statement.

For example, if you find that there was a conspiracy between Boyd and any other person or persons at the time of Boyd's statements in Scottsdale, Arizona, then you may consider anything said by Boyd which you believe to be in furtherance of the conspiracy as evidence against every other person in the conspiracy. If you do not first find such a conspiracy, or if you do not find any statement made by one of the conspirators to be in the furtherance of the conspiracy, then you may use the statement of any defendant as evidence only against him and not against the other defendants.

I instruct you that so far as the first count against defendant Ege is concerned, you may not use any evidence of statements not made by him or in his

presence in any case, even if you may use such evidence against defendant Ege under the second count, in accordance with the instruction I have just given you.

I further instruct you that the testimony of the witness Goldberg—you remember him, the lingerie entrepreneur who came here—is stricken from the record, and that you are not to consider it for any purpose whatsoever.

On count 2 of the charge you may find all of the defendants guilty or you may find two of the defendants guilty and one [343] not guilty, or you may find all of the defendants not guilty.

Obviously a man cannot conspire with himself.

In every criminal proceeding under our system of jurisprudence the defendants are presumed to be innocent until the contrary is proven, and in the case of a reasonable doubt whether their guilt is satisfactorily shown they are entitled to an acquittal.

This presumption is a form of evidence which attaches at every stage of the case and to every fact essential to a conviction.

Now, you have heard me say a great deal about reasonable doubt. I am not going to tell you what it is. It means exactly what it says. It is a doubt based upon reason, upon the thinking mind. It is that state of mind which, after an entire comparison, consideration of all the evidence, leaves your minds in that condition that you cannot say you feel an abiding conviction to a moral certainty as to the truth of the charge. The law, however, does not

require a demonstration; in other words, such a degree of proof, as excluding possibility of error, produces absolute certainty, because such a form of proof is rarely possible in human affairs. Moral certainty only is required. Or, in other words, that degree of proof which produces conviction in an unprejudiced mind.

Now, by reasonable doubt is not meant every possible or [344] fanciful conjecture that may be imagined by you, or may be suggested by you, or may be surmised by you, or may be suspicioned by you. The rule is not that there must be an acquittal in all cases of mere possible doubt, because, as I have just indicated a moment ago, everything relating to human affairs and depending upon moral evidence may be open to some possible or imaginary doubt.

Now, as I have heretofore indicated, you ladies and gentlemen are the sole judges of the weight of the evidence and the credibility of these witnesses who appeared before you. It is for you alone to judge the credibility of the witnesses, to say whether they are to be believed or disbelieved, the weight to be given the evidence offered is for your determination, its effect and its conclusions to establish any fact for which it has been offered for your consideration is your duty to resolve. In so doing, you may consider the conduct, the appearance, the demeanor of the witnesses upon the stand, the consistency or inconsistency, the reasonableness or unreasonableness, and the probability or improbability of any statement made by anyone. You have a right also to consider the interest that a witness has in the result

of this trial. From these and such other considerations as may have appeared to you on the case as presented, you will arrive at your conclusions as to the weight, the effect and the sufficiency of the testimony that has been offered. [345]

Every witness who takes the stand here is presumed to speak the truth. This presumption, however, may be repelled by the manner in which a witness gives his or her testimony, by the character of the testimony offered or by the motives which may actuate a witness in giving his or her testimony or by contradictory evidence.

And, of course, any witness who is found by you to be wilfully false in a material part of his or her testimony is to be distrusted by you in other parts.

Now, your power of judging of the effect of the evidence is not an arbitrary power, but it is one that must be exercised by you with legal discretion and in subordination to the rules of evidence.

You are not bound to decide this case in conformity with the declaration of any number of witnesses which do not produce conviction in your minds against a less number or against a presumption of law or other evidence which does not satisfy or favor your minds.

To put it another way, it is not the greatest number of witnesses that should control you where their testimony is not satisfactory to your minds against a less number whose testimony does satisfy your minds and produces this moral conviction, of which we have been speaking, that they are telling the truth.

To put it another way, it is upon the quality of testimony [346] rather than upon its quantity, or the number of witnesses, that you should act, provided it produces in your minds this moral conviction and satisfies you of its truthfulness.

So, therefore, the conduct of the witnesses, their character as shown by the evidence, their manner on the stand, their relation to the parties, may be taken into consideration for the purpose of determining their credibility or, if I may coin a word, their believability, as to whether they have spoken the truth or not, and you may scrutinize not only the manner of the witnesses on the stand, their relation to the case, if any, but also their degree of intelligence, their bias or prejudice, if any, the reasonableness or unreasonableness of their statements, and the strength or the weakness of their recollections. You may consider also their hopes and their fears.

As I told you before, under your oaths you are to take into consideration only that evidence which has been admitted by the Court. You should therefore in obedience to your oaths discard from your mind every impression or idea suggested to you by questions asked by counsel which were objected to and to which objections were sustained. The defendants here are to be tried only on the evidence which is before this jury and not upon suspicions that may have been excited by questions of counsel, the answers to which were not permitted. [347]

The direct evidence of one witness who is entitled

to full credit is sufficient for the proof of any fact in a case of this kind.

Gentlemen, I am about to conclude my instructions. Is there anything you wish to take up in the absence of the jury?

Mr. Sparrow: No, Your Honor.

Mr. Stout: Yes, Your Honor.

The Court: You may be excused for a few moments, ladies and gentlemen.

(The following proceedings were had outside the presence of the jury.)

EXCEPTIONS TO INSTRUCTIONS BY THE DEFENSE

Mr. Stout: I trust the Court can read my handwriting (submitting written memorandum of exceptions to the Court). I tried to brief it out in writing. If the Court has any questions, I will try to answer.

The Court: Take this down, Mr. Reporter.

Mr. Stout: Do you care if I read it?

The Court: I will read it.

Let the record show that Mr. Stout, on behalf of the defendant Ege, handed me a handwritten piece of paper entitled "U. S. vs. Ege, et al., No. 34576, Exceptions by Defendant Ege to the Court's Instructions":

"The defendant Edward Raymond Ege takes exception to the following instructions given by [348] the Court:

"1. The instructions re possibility of Constance Marie Bell being an accomplice, leaving it to the

jury to determine if she was in fact an accomplice.

“2. The instruction that the witness Bell’s testimony is to be considered with caution and weighed with care.”

Mr. Stout: That was my understanding, that the rule was that the testimony of an accomplice was to be viewed with distrust.

The Court: If I were you I would want the instruction.

Mr. Stout: I want the instruction “viewed with distrust” rather than “with caution.” I think that instruction is stronger than the other.

The Court: I prefer to give the one I gave, be considered with caution and weighed with care.

Continuing:

“Defendant Ege excepts to the Court’s failure to instruct as follows:

“1. That the testimony of Bell ought to be viewed with distrust.

“2. Unanimity of the jury as to the overt act proved by the Government.

“3. Statements of Boyd after arrest are not binding upon Edward Ege. [349]

“4. Failure of the trial Court to properly instruct on rules applicable to circumstantial evidence.”

There is no rule about circumstantial evidence in this circuit. This circuit makes no distinction.

“5. Failure of the Court to require special verdict as to each overt act.

“6. Failure of the Court to instruct re admissions, confessions or declarations of——”

What is this word?

Mr. Stout: I think it might be "Boyd's."

The Court: "—of a codefendant after termination of conspiracy caused by the arrest of the defendant Boyd."

And you have No. 7 apparently crossed out. Did you mean that to be crossed out, in red pencil?

Mr. Stout: Yes, sir, I wish it to be withdrawn, Your Honor. Your Honor did so instruct.

The Court: No. 8:

"Also the Court's failure to give Ege's instructions Nos. 31, 38, 40, 42, 43, 44.

"Respectfully submitted,

"GREGORY S. STOUT."

The record will show that your exceptions are noted. Bring in the jury. [350]

They are all denied.

Do you have some?

Mr. Campbell: (These proceedings also outside the presence of the jury.) They are not with regard to the instructions already given but with regard to those that are about to be given.

The Court: I am going to give them.

Mr. Campbell: I understand that, but I wish to request—Your Honor has indicated about sending the indictment out to the jury, and we respectfully request that the bill of particulars—which amends the indictment—not amends but adds to it—be also sent out with it.

The Court: Do you have any objection to that, Mr. Sparrow?

Mr. Sparrow: I think that the indictment is the only thing relevant, Your Honor, and I would prefer if only the indictment were furnished the jury.

The Court: Well, I am going to send just the indictment. If they want the bill of particulars, however, I think in view of the 14 overt acts that are set forth, I will be inclined to give it to them, if they insist.

Mr. Campbell: That is what I had in mind.

The Court: If they ask for it.

Mr. Campbell: Your Honor read the overt acts as amended by the bill of particulars and I wish at this time to renew the request for the special verdicts on the 14 overt acts. [351]

Mr. Sparrow: In connection with the bill of particulars, in view of the fact of the stipulation which has been entered into, if Your Honor please, to the effect that they had selected—were selected by me—based on—to the best of my ability—the evidence that I then had at hand, I don't think it forms necessarily part of the Grand Jury procedure by which these defendants were held.

The Court: I am going to wait until they ask for it. If they ask for it, I am going to be inclined to send it in.

Mr. Hagerty: Your Honor, the defendant Boyd would join in the defendant Bruno's request for the special findings on the overt acts, a special verdict on the overt acts.

The Court: Denied.

(The following proceedings were had within the presence of the jury.)

The Court: Ladies and gentlemen of the Court, at long last I am going to conclude these instructions to you. First of all, I want to tell you this, the question of punishment of the defendants in this case, in the event of a conviction, is of absolutely no concern to this jury. Any consideration of punishment should not in any sense enter into or influence your deliberations. The duty of imposing sentence, if any, rests exclusively upon the Court, and that is a burden which I must bear alone.

Your sole function is to weigh the evidence, determine the [352] guilt or innocence of the defendants solely upon the basis of the law and on the basis of the evidence and in accordance with the principles of the law which I have given you during the course of these instructions. Under your oaths as jurors, therefore, you cannot allow a consideration of the punishment which may be inflicted upon the defendants, if they are convicted, to influence your verdict in any manner whatsoever.

Now, as heretofore has been indicated, the jury is composed of 12 people, and while undoubtedly their verdict should represent the opinions of each individual juror, it by no means follows that the opinions may not be changed by conference in the jury room. The very object of the entire jury system is to secure a unanimity by a comparison of views and by arguments among the jurors themselves, and

each juror should listen to those arguments with the disposition to be convinced to those opinions. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion of the case at that particular moment, nor is it intended that he or she should close his or her ears to the arguments of others equally honest and intelligent with himself or herself.

Now, ladies and gentlemen, I appreciate that you have been here at the expense of your own affairs for the purpose of trying these issues of fact which have been presented by the allegations of the indictment which was filed by the Grand [353] Jury and the defendants' plea of not guilty thereto. By their plea of not guilty they put in issue all, each and every one of the material allegations contained in the indictment. As I have indicated before, you are performing one of the highest duties of citizenship, highest functions.

While you may take the indictment into the jury room, and the clerk will be instructed to give it to you first, you are not to consider it as evidence in the case because, as I told you when you were empaneled, it is merely the charging instrumentality by means of which the orderly processes of the Court are invoked and by which these defendants are brought in the course of orderly procedure to trial.

Now, this duty which you are about to perform, ladies and gentlemen, and which you have been performing, is a duty that you should perform un-

influenced in the slightest degree by any pity or compassion for these defendants or by any passion or prejudice on account of the nature of the charges which have been lodged against them. The law does not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice. Sympathy is a most commendable quality in the human family, but it has no place in the jury room. A verdict, therefore, that is founded on sentiments, pity for the accused persons, or upon public feeling or public opinion or upon passion or prejudice or conjecture or suspicions or surmises or upon any other factor of that kind would be a false [354] verdict. So, therefore, do not take counsel of them in your deliberations.

And remember this, ladies and gentlemen, the importance of your duties requires that you consider the right of the Government of the United States to have its laws properly executed and that it is with you, citizens selected from this district, that finally rest the duty of determining the guilt or innocence of those accused of crime, and unless you do your duty the law might just as well be stricken from the statute books.

You should also ever keep in mind the importance to the accused persons of the result of your deliberations and be just to them as well as to the Government, because both the Government of the United States and the defendants in this case have a right to demand, and they do demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the

case and give to each your conscientious good judgment and that you will reach a verdict that will be just to both sides regardless of what the consequences may be to anyone.

The law contemplates that a verdict be reached one way or the other, provided it can be done without doing violence to your individual consciences. If, ladies and gentlemen, therefore, upon a review and consideration of all of the evidence you should be satisfied beyond a reasonable doubt, as [355] I have defined reasonable doubt to you, that the defendants are guilty, you will so declare by returning a verdict finding them guilty as charged; and if you are not satisfied of their guilt beyond a reasonable doubt, you should without hesitation return a verdict finding them not guilty.

Now I am about to submit this case to you for your patient, attentive and deliberative consideration. It is your individual duty to consider all of the evidence that has been presented to you upon this important case, important to the Government, important to the defendants. Under the law, as I have given it to you, you must reach a verdict according to your best judgment. You will arrive at a verdict, if I may repeat myself, and emphasize it, without any fear, favor, prejudice or sympathy, but rather performing your duty with a sense of the responsibility that rests upon you and in conformity with your solemn oaths and obligations that you took when you were sworn in as jurors in this case.

Now, this is a criminal case, and, as I have indicated before, your verdict must be unanimous; that

is to say, all 12 of you must agree upon a verdict. And when you go into the jury room there are a few suggestions I would like to make to you respectfully in that regard. You should first proceed to elect one of your number as the foreman or forelady, and, if I may suggest to you, you should take a little time in that selection. Don't do it haphazardly and say: "Now, you [356] be the foreman, you're the first one in the jury room." Or, "You were the last one in the jury room." Or, "You came in, in the middle." You will agree, I think, that that is a rather stupid way of arriving at a decision as to who will preside over the deliberations, as important to all parties concerned as these are to be, and a rather silly way of proceeding, and therefore I counsel you to avoid it. Select one of your number in whom you have confidence that he will preside or she will preside with decorum and expeditiously aid you in arriving at a verdict.

The exhibits here are slight. I think a few checks, possibly some hotel records. If you want them, you may have them. They will be available to you at any time.

Any other needs that you may desire, you will communicate them to the United States Marshal, who will be outside your jury room door and who will also be there to give you any personal comforts that you may require.

The case is now submitted to you ladies and gentlemen.

Before that, I want to read to you—I neglected to do this—the forms of verdict.

The order in which I read these is of no importance. They contain the title of the court and cause, United States of America vs. Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joe Victor Bruno.

“We, the jury, find Edward Raymond Ege, [357] **the defendant at the bar**”—and a space for you to write “guilty” or “not guilty” as to count 1; “guilty or not guilty” as to count 2; and a space provided for the signature of your foreman or forelady.

The second form of verdict:

“We, the jury, find Joseph Victor Bruno, the **defendant at the bar**”—“guilty” or “not guilty” as to count 2.

That is the only count in which he is charged.

A similar space for the signature of the foreman.

And:

“We, the jury, find Joseph Boyd”—he is named in it as “alias Joe Boyd”—I don’t know whether that makes any difference—“the defendant at the bar”—“guilty” or “not guilty” as to count 2, because that likewise is the only count wherein he is charged. Similar space provided for the signature of your foreman or your forelady.

You may now retire.

(The jury, thereupon, retired to its deliberations.)

Certificate of Reporter

(We), Official Reporters and Official Reporter(s) pro tem, certify that the foregoing transcript of 358 pages is a true and correct transcript of the matter

therein contained as reported by me (us) and thereafter reduced to typewriting, to the best of my (our) ability.

/s/ [Indistinguishable,]

/s/ W. A. FOSTER.

[Endorsed]: Filed November 29th, 1955.

In the United States District Court for the Northern
District of California, Southern Division

No. 34576, Criminal

EDWARD RAYMOND EGE, JOSEPH BOYD,
Alias JOE BOYD, and JOSEPH VICTOR
BRUNO,

Defendants-Appellants,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled case and that they constitute the Record on Appeal herein as designated by the attorneys for the appellants:

Indictment.

Notice of Appeal, Ege.

Notice of Appeal, Boyd.

Notice of Appeal, Bruno.

Amended Notice of Appeal, Boyd.

Verdict, Ege.

Verdict, Boyd.

Verdict, Bruno.

Judgment and Commitment, Ege.

Judgment and Commitment, Boyd.

Judgment and Commitment, Bruno.

Motion by Ege to Dismiss 1st Count of Indictment.

Substitution of Attorneys, Ege.

Motion for Bill of Particulars.

Bill of Particulars.

Motion for Separate Trial of Counts in Indictment, Boyd—Boyd.

Notice of Motion for Separate Trial of Counts in Indictment.

Motion for Separate Trial of Counts in Indictment, Bruno.

Notice of Motion for Separate Trial of Counts in Indictment, Bruno.

Motion for a New Trial, Ege.

Motion for a New Trial, Boyd.

Motion for a New Trial, Bruno.

Motion in Arrest of Judgment, Bruno.

Stays of Execution, Ege.

Request for Questions Voir Dire Examination of Jurors.

Designation of Appeal, Boyd.

Designation of Appeal, Bruno.

Motion for Bail.

Minute Orders, 6-23, 7-7, 7-8, 7-14, 8-4, 9-26, 9-27, 9-28, 9-29, 10-28, 1955.

Reporter's Transcripts, 9-26, 9-27, 9-28, 9-29, 1955, and Inserts Exhibits, U. S. No. 1 and Deft.'s No. A.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 29th day of November, 1955.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 14955. United States Court of Appeals for the Ninth Circuit. Edward Raymond Ege, Joseph Boyd and Joseph Victor Bruno, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed November 30, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14955

JOSEPH VICTOR BRUNO,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT BRUNO INTENDS TO RELY

Comes now the appellant, Joseph Victor Bruno, pursuant to Rule 17 (6), and represents to this Honorable Court that he intends to rely upon the following points on his appeal, all of which occurred in the course of the hearings and trial in the District Court:

(a) Error in the denial of the severance of trial of the counts of the indictment.

(b) Error occurring in the overruling of objections by appellant to the admission of evidence.

(c) Error in the denial of appellant's motions for judgment of acquittal.

(d) Error in denial of appellant's motion for a directed verdict.

(e) Error in denial of appellant's motion in arrest of judgment.

(f) Error in refusing to require special verdicts upon the alleged overt acts set forth in the indictment.

(g) Error in refusing to give instructions offered by the appellant.

(h) Error occurring in the instructions given to the jury.

(i) Prejudicial misconduct on the part of the prosecuting attorney and the trial judge in eliciting and receiving hearsay testimony as to character and reputation of the appellant when the same had not been put in issue by the appellant.

Respectfully submitted,

/s/ WALTER M. CAMPBELL,

LILLIE AND BRYANT and
WALTER M. CAMPBELL,

ROBERT B. McMILLAN,
Attorneys for Appellant.

Dated: December 1, 1955.

Service of Copy acknowledged.

[Endorsed]: Filed December 6, 1955.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT EGE INTENDS TO RELY

Comes now the appellant, Edward Raymond Ege, pursuant to Rule 17 (6), and represents to this Honorable Court that he intends to rely upon the following points in his appeal, all of which occurred

in the course of the hearings and trial in the District Court:

(a) **Procedural errors.**

(1) The prejudicial denial of a motion, to exclude witnesses.

(2) Prejudicial denial of appellant's motion.

(3) Refusal of Court to permit to elect special verdicts upon the overt acts.

(b) Improper admission of evidence.

(c) Wrongful exclusion of evidence.

(d) Improper instructions given to the jury and the rejection of proper and lawful instructions requested by appellant.

(e) Insufficiency of the evidence.

(f) Misconduct of the trial Court.

(g) Double punishment imposed upon appellant.

Respectfully submitted,

GEORGE T. DAVIS,

/s/ GEORGE T. DAVIS,

Attorney for Appellant.

Dated: December 7, 1955.

Service of Copy Acknowledged.

[Endorsed]: Filed December 8, 1955.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT BOYD INTENDS TO RELY

Comes now the appellant Joseph Boyd, pursuant to Rule 17 (6), and represents to this Honorable Court that he intends to rely upon the following points on his appeal, all of which occurred in the course of the hearings and trial in the District Court:

(a) Error in the denial of the severance of trial of the counts of the indictment.

(b) Error occurring in the overruling of objections by appellant to the admission of evidence.

(c) Error in the denial of appellant's motions for judgment of acquittal.

(d) Error in denial of appellant's motion for a directed verdict.

(e) Error in denial of appellant's motion in arrest of judgment.

(f) Error in refusing to require special verdicts upon the alleged overt acts set forth in the indictment.

(g) Error in refusing to give instructions offered by the appellant.

(h) Error occurring in the instructions given to the jury.

(i) Prejudicial misconduct on the part of the prosecuting attorney and the trial judge in eliciting and receiving hearsay testimony as to character and reputation of the appellant when the same had not been put in issue by the appellant.

Respectfully submitted,

/s/ EMMET F. HAGERTY,
Attorney for Appellant.

Dated: December 8, 1955.

Receipt of Copy Acknowledged.

[Endorsed]: Filed December 9, 1955.

[Title of Court of Appeals and Cause.]

SUBSTITUTION OF ATTORNEYS

I, Joseph Boyd, the appellant above named, hereby substitute and appoint Leo R. Friedman, 935 Russ Building, San Francisco, California, as my attorney in the above matter in the place and stead of Emmet F. Hagerty.

Dated: December 29th, 1955.

/s/ JOSEPH BOYD.

I, Emmet F. Hagerty, hereby consent to the foregoing substitution of attorneys.

/s/ EMMET F. HAGERTY.

I, Leo R. Friedman, hereby consent to the foregoing substitution of attorneys.

/s/ LEO R. FRIEDMAN.

Receipt of Copy Acknowledged.

[Endorsed]: Filed January 16, 1956.

TOPICAL INDEX

	PAGE
Jurisdictional statement	2
The indictment	4
Overt acts	5
Statutes involved	7
Questions presented	7
Specifications of error relied upon.....	8
The evidence	8
Testimony received	9
Further proceedings	16
Argument	17

I.

The District Court erred in denying appellant's motion for a judgment of acquittal made at the close of the evidence offered by the Government and renewed at the close of all evidence and renewed after the verdict of the jury for the reasons that (A) there was insufficient evidence to sustain a conviction, and (B) the District Court was without jurisdiction to enter judgment against the appellant or to impose sentence upon him.....	17
Function of motion for acquittal.....	17
Necessary proof of a conspiracy.....	18
(A) There was insufficient proof to sustain a conviction....	20
Bell's trip from Arizona to California not in violation of Section 2421, Title 18, United States Code.....	24
(B) The trial court was without jurisdiction to enter judgment against the appellant or to impose sentence upon him	28
General legal principles involved.....	28
The indictment herein.....	32

ii.

PAGE

Overt acts alleged to have occurred in Northern District of California.....	33
Contention of appellant.....	39

II.

The appellant was denied a fair trial in that (A) evidence of appellant's reputation and character was introduced as part of Government's case, (B) the jury was prejudiced by remarks of the prosecutor and trial judge as to safety of Government witness (C) a prejudicial variance developed among the indictment, the bill of particulars and the Government's evidence, and (D) a separation of the counts of the indictment for trial was denied by the trial court.....	40
A. Evidence of appellant's character and reputation was erroneously introduced as part of Government's case....	40
B. Jury was prejudiced by prosecutor's statement that complaining witness feared for her safety.....	42
C. A prejudicial variance occurred between the indictment, the bill of particulars and the proof offered by the Government	44
D. A separation of the counts of the indictment for trial was erroneously denied.....	51

III.

The trial court erred in refusing to require special verdicts on the overt acts alleged in the indictment.....	52
Conclusion	53

Appendix A:

Section A. Pertinent testimony of Constance Marie Bell regarding Bruno	App. p. 1
Section B. Testimony of John Goldberg.....	App. p. 5
Section C. Variance among indictment, bill of particulars and proof of overt acts.....	App. p. 9

TABLE OF AUTHORITIES CITED

CASES	PAGE
Bartlett v. United States, 166 F. 2d 920.....	21, 22
Berger v. United States, 55 S. Ct. 629.....	49
Canella v. United States, 157 F. 2d 470.....	49
Curley v. United States, 160 F. 2d 229, cert. den., 331 U. S. 837	17
Glassner v. United States, 315 U. S. 60, 62 S. Ct. 457.....	23
Grigg v. Bolton, 53 F. 2d 158.....	30
Hill v. United States, 150 F. 2d 760.....	25
Kotteakas v. United States, 66 S. Ct. 1239.....	49
Kuhn v. United States, 26 F. 2d 463.....	23
La Page v. United States, 146 F. 2d 536.....	25
Lee v. United States, 106 F. 2d 906.....	27
Marino v. United States, 91 F. 2d 691, cert. den., 302 U. S. 764	18
May v. United States, 166 F. 2d 1007.....	22
McGuire v. United States, 152 F. 2d 577.....	26
Moran v. Jones, 264 Fed. 768.....	29
Nibelink v. United States, 66 F. 2d 178.....	23
Smith v. United States, 92 F. 2d 460.....	31, 32
Tofaneli v. United States, 28 F. 2d 581.....	21
United States v. Jones, 174 F. 2d 746.....	29
United States v. Saledonis, 93 F. 2d 302.....	25
United States v. United States Gypsum Co., 67 Fed. Supp. 397	23
Wagner v. United States, 171 F. 2d 302, cert. den., 337 U. S. 944	25
Woitte v. United States, 19 F. 2d 506.....	29, 32

RULES

Federal Rules of Criminal Procedure, Rule 29(a)	17
---	----

STATUTES	PAGE
United States Code, Title 18, Sec. 371	1, 4, 7, 29
United States Code, Title 18, Sec. 398.....	25
United States Code, Title 18, Sec. 399.....	25
United States Code, Title 18, Sec. 2421	7, 23, 24, 25
United States Code, Title 18, Sec. 2422	24, 25
United States Code, Title 18, Sec. 3231.....	2
United States Code, Title 28, Sec. 391.....	49
United States Code, Title 28, Sec. 1291.....	2
United States Code, Title 28, Sec. 1294(1).....	2
United States Constitution, Sixth Amendment.....	2, 28

TEXTBOOKS

22 Corpus Juris Secundum, p. 676.....	41
Wigmore on Evidence (3rd Ed.), p. 357.....	41

No. 14955.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EDWARD RAYMOND EGE, JOSEPH BOYD and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the
Northern District of California, Southern Division.

Brief for Appellant, Joseph Victor Bruno.

Joseph Victor Bruno (hereinafter referred to as Bruno), appellant herein, together with two other persons was indicted on June 15, 1955, in the United States District Court for the Northern District of California and charged with conspiring knowingly to transport women between California and Nevada for the purpose of prostitution (Title 18, U. S. C., Sec. 371; Title 18, U. S. C., Sec. 2421). [R. 3-6.] Following a trial by jury, appellant was convicted and sentenced to five years imprisonment. [R. 37-39.]

This is an appeal from the judgment of the court. [R. 42.]

Jurisdictional Statement.

1. The jurisdiction of the District Court:

Title 18, U. S. C., Section 3231, provides that "The District courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." The Constitution of the United States, Amendment 6:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury in the state and district wherein the crime shall have been committed."

2. The jurisdiction of this Court upon appeal to review the judgment in question

Title 28, U. S. C., Sec. 1291, provides:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

Title 28, U. S. C., Section 1294(1) provides:

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

"(1) From a district court of the United States to the court of appeals for the circuit embracing the district;"

3. The pleadings necessary to show the existence of jurisdiction:

(a) The Indictment. [R. 3-6.]

(b) The Bill of Particulars. [R. 15-16.]

(c) Motion for separation of counts of indictment for trial [R. 22-24], and Court's denial thereof. [R. 25.]

(d) Motion for judgment of acquittal at end of Government's case and Court's denial thereof. [R. 280.]

(e) Renewal of motion for judgment of acquittal at the end of all evidence renewed and denied after return of verdict. [R. 30.]

(f) Verdict of jury. [R. 29.]

(g) Motion for New Trial [R. 34-36] and denial thereof. [R. 37.]

(h) Motion for arrest of judgment and denial thereof. [R. 37, 39-40.]

(i) Judgment and Commitment. [R. 52-53.]

(j) Notice of Appeal. [R. 41-42.]

(k) Statements of Points on Appeal. [R. 369-370.]

4. The facts disclosing the basis upon which it was contended that the District Court had jurisdiction and the facts disclosing that this Court has jurisdiction upon appeal to review the judgment in question:

In the introductory portion of this brief these facts have been concisely stated and will be treated more fully in the subsequent development of the facts of the case. To avoid repetition, the statement is omitted here.

The Indictment.

The indictment was in two counts. Although the appellant was made a defendant in only the second count, inasmuch as the prosecution contended that both counts related to the same subject matter, both will be reproduced. The indictment provides as follows:

INDICTMENT.

First Count: (Title 18, United States Code, Sec. 2421). The Grand Jury charges that:

Edward Raymond Ege, defendant herein, did on or about the 17th day of October, 1953, in the City and County of San Francisco, State and Northern District of California, knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution.

Second Count: (Title 18, United States Code, Sec. 371). The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, at a time and place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts.

Overt Acts.

1. In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Ed-

ward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.

11. In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. GORDON TYNDALL,
Foreman.

Statutes Involved.

Title 18, U. S. C., Section 371, provides:

“If two or more persons conspire either to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be (punished as in such statute provided).”

Title 18, U. S. C., Section 2421, provides:

“Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution . . . shall be (punished as in such statute provided).”

Questions Presented.

1. Whether there was sufficient evidence to sustain a conviction of the appellant Joseph Victor Bruno.
2. Whether the evidence was sufficient to establish the jurisdiction and venue in the District Court for the Northern District of California.
3. Whether hearsay evidence of a defendant's reputation and character can be introduced as part of the Government's case in chief, and when not put in issue by the defendant.
4. Whether the appellant Joseph Victor Bruno was accorded a fair trial in the circumstances of this case.
5. Whether the Trial Court should have required special verdicts with respect to the overt acts alleged in the indictment under the circumstances of this case.

Specifications of Error Relied Upon.

1. The District Court erred in denying appellant's motion for a judgment of acquittal made at the close of the evidence offered by the Government and renewed at the close of all evidence and renewed after the verdict of the jury for the reasons that (a) there was insufficient evidence to sustain a conviction, and (b) the District Court was without jurisdiction to enter judgment against the appellant or to impose sentence upon him. Points on Appeal (c), (d) and (e). [R. 369.]

2. The appellant was denied a fair trial in that (a) hearsay evidence of appellant's reputation and character was introduced as part of Government's case, (b) the jury was prejudiced by remarks of the prosecutor and the Trial Judge as to safety of the Government witness, (c) a prejudicial variance developed among the indictment, the bill of particulars, and the Government's evidence, and (d) a separation of the Courts of the indictment for trial was denied by the Trial Court. Points on Appeal (a), (b) and (i). [R. 369-370.]

3. The Trial Court erred in refusing to require special verdicts on the overt acts alleged in the indictment. Point on Appeal (f) [R. 369].

The Evidence.

The evidence produced by the Government in support of the indictment (including the count to which appellant was not a party), consisted primarily of the testimony of the woman (Constance Marie Bell) alleged to have been transported and to have been the subject of the conspiracy. Portions of her testimony were sought to be corroborated by other witnesses. All of the evidence is such that it can be briefly summarized below:

Testimony Received.

(1) CONSTANCE MARIE BELL.

I was born in 1934 [R. 58], had nine years schooling [R. 60], and had had various employments including California Physicians Service [R. 60], Wall Street Journal [R. 60], Hasting's Department Store [R. 60], and President Follies Theatre [R. 61, 94-95]; that I had adopted the name of Cindy Marlow [R. 100].

In September [R. 94], 1953, I commenced to work as a prostitute after a conversation with Ege [R. 64-67] as to how the business was conducted and the amount of money to be made [R. 66], and from that time until about Christmas, 1953, turned over a part of my earnings to Ege [R. 67, 81.] The relationship between myself and Ege came to a final and complete termination a few days before Christmas, 1953 [R. 90-91.]

During this period of time, I worked as a prostitute at Folsom, California [R. 68-69]; Scottsdale, Arizona [R. 75]; Delano, California [R. 79]; Yolo, California [R. 142-144]; Isleton, California [R. 81]; Barstow, California [R. 85-86]; and Las Vegas, Nevada [R. 87].

In the latter part of September or first of October [R. 173], Ege and I discussed the fact that one Judy Berg, a prostitute [R. 71-72] was going to Scottsdale, Arizona, to work in a house of prostitution operated there by Boyd [R. 73]; Ege furnished the sum of \$50 [R. 71-72] to me to help defray my share of the cost of the trip [R. 71-72], the car used for the transportation being furnished by Berg [R. 72].

Arriving in Phoenix, Arizona, Berg contacted someone by telephone [R. 74] and arranged for herself and me to be taken to the house of prostitution at Scottsdale [R. 74].

In Scottsdale, I worked in the house of prostitution operated by Boyd [R. 75].

After a week or ten days at Scottsdale, Berg informed me that Ege would phone me at the telephone booth of a gasoline station outside of Scottsdale [R. 76].

In the subsequent telephone conversation with Ege, I informed him that business was bad at Scottsdale [R. 77]; Ege advised me that Delano, California, was "opening up" [R. 77], and suggested that I purchase an airplane ticket for Bakersfield, California, via Los Angeles, California [R. 78] with funds I had earned at Scottsdale [R. 78].

From Burbank, California, I called a number in Delano by telephone [R. 78], which number Ege had given me in his telephone conversation with me [R. 78] and which he told me was the number of Joe Bruno [R. 78] and to call when I reached Los Angeles [R. 78]; I talked with someone unknown [R. 173] at this number, and made arrangements to be met at the Bakersfield airport [R. 174].

At the Bakersfield airport, I was met by Bruno [R. 78], who drove me to a house of prostitution in Delano [R. 78]; on the trip Bruno told me the house belonged to him and his "old lady" [R. 79].

I stayed at the Delano house for two or three weeks [R. 79], and saw Bruno there frequently [R. 79-80], particularly in helping to count the money taken in [R. 80]; that I had no financial transactions with Bruno [R. 177-178].

After leaving Delano, I met Ege at Fresno, California [R. 80] where I gave him part of my earnings [R. 81], and then returned to San Francisco with him [R. 80].

At Ege's suggestion, I worked in houses of prostitution at Yolo, California [R. 142-144] and Isleton, California [R. 81].

I then went from San Francisco to Barstow, California [R. 85] where I worked in a house of prostitution in a nearby town, Newberry [R. 85].

While in Barstow, Ege, on his way to Las Vegas, Nevada, stopped to see me [R. 155] and I gave him a part of my earnings [R. 155]. I gave him about \$100 or so.

The house of prostitution where I was working was raided and I was placed under arrest [R. 85-86]; I then got word to Ege, in Las Vegas, to come and get me, which he did [R. 87, 157], driving me to Las Vegas [R. 87, 157].

At Las Vegas, I worked briefly as a prostitute [R. 88], quarreled with Ege [R. 88], left him [R. 88], and returned to San Francisco by bus [R. 88]. This terminated my relationship with Ege [R. 91].

(2) GENE GIOMI.

In the Spring of 1952, owned the premises known as 395 Monterey Boulevard, San Francisco [R. 195]; from April 15, 1952, to May 15, 1953, rented the premises to Mr. and Mrs. Boyd [R. 195-196]; that at that time, Boyd introduced Ege to witness, stated that he (Boyd) was going to leave the state, and that Mr. and Mrs. Ege would carry on his obligations [R. 196]; that Ege took over the lease [R. 200] and occupied the premises from May 15, 1953, to January 29, 1954, when the premises were sold [R. 196].

(3) J. W. ELLINGSON.

In October, 1953, I owned a house located three miles north of Scottsdale, Arizona [R. 201]; on the afternoon of October 6, 1953 [R. 201], I rented this house to Boyd for a period of one year at \$150 per month and was paid the first and last month's rent in advance [R. 202]; Boyd was privileged to occupy it beginning October 7, 1953 [R. 203], but I do not know when he actually occupied it [R. 203]; he moved out about October 20, 1953 [R. 203].

(4) GEORGE W. RATHJEN.

I am the assistant manager at the El Rancho Hotel, Phoenix, Arizona [R. 204]. Mr. and Mrs. Boyd registered into the hotel on September 20, 1953 [R. 204]. They checked out on October 21, 1953 [R. 204]. While there, Boyd made telephone calls to San Francisco [R. 208], but I do not know to whom or what telephone numbers [R. 208].

(5) CHARLES W. BRILEY.

In October, 1953, I was operating a bar and restaurant known as the Pink Pony, in Scottsdale, Arizona [R. 209]; I met Boyd in my place of business in the first week of October [R. 209] and had occasion to see him after that [R. 210] every day or every other day for a period of two weeks [R. 210]. At our second meeting, he told me he was interested in leasing a residence in Scottsdale [R. 210]; in a further discussion, Boyd said he was having a hard time financially, and would appreciate my sending him any business [R. 211]. On one occasion Boyd stated to me that two girls were coming from California [R. 212]. I saw Bell in the house at Scottsdale [R. 266-267].

(6) GEORGE H. THOMAS, JR.

In October, 1953, I was Constable of Scottsdale Precinct and part-time Deputy Sheriff of Maricopa County, Arizona [R. 215]. Around the middle of October, 1953, I discussed with Boyd the fact that he was operating a house of prostitution, and he stated "we are leaving" [R. 216]. Prior to that, I had visited the house on several occasions [R. 217], and believe I saw the witness Bell there [R. 218].

(7) KENNETH WARD WRIGHT.

In December, 1953, I was a Deputy Sheriff, County of San Bernardino, California [R. 219]. On the evening of December 21, 1953, I had occasion to raid a house of prostitution approximately four miles east of Newbury, California, which is about 25 miles east of Barstow, California [R. 219]. That among the girls arrested was the witness Bell, who was known to me and booked under the name of Cindy Martin [R. 220].

(8) JOHN GOLDBERG.

From about 1948 to 1954, I was a manufacturer of lingerie [R. 220]. During the Fall of 1953, I had occasion to visit Delano, California, as a lingerie salesman, and visited a place known as "Kitty's", among others [R. 221]. I have occasion to visit a number of houses of prostitution, and am familiar with the language used by those engaged in prostitution [R. 221]. The term "old lady" means that they are with a man [R. 222], whom they call a "fish" [R. 222-223] which is the same as "pimp" [R. 223]. The term "old lady" was applied to Kitty [R. 223]. Kitty's "old man" I heard was Joe Bruno [R. 225]. I have never met Bruno, although I

called at Kitty's place three or four times a year [R. 225]. In the Fall of 1953, I saw a blonde girl at Kitty's place whose name I remember as "Cindy" [R. 226].

(9) JOHN C. MOE [R. 231].

I am, and was in January, 1955, a Special Agent, Federal Bureau of Investigation [R. 231], employed at San Diego [R. 231]. On January 12, 1955, in San Diego, I had occasion to interview Boyd [R. 231]. Boyd told me that in the Fall of 1953, about September, he was in Scottsdale, Arizona [R. 233]; that he stayed at the El Rancho Motel for about 25 days [R. 234]. He stated that he had planned to set up gambling games and that the local constable had given him the "green light" [R. 234]; that he had rented premises in Scottsdale from a Mr. J. Walter Ellingson [R. 235], but had made no money there [R. 235]. Boyd stated that he had purchased a 1953 Cadillac in Phoenix [R. 236], and had given false employment references [R. 236]. Boyd stated that he had first met Ege at the Sarong Club in San Francisco about two years previously, at which time Ege was going to buy a part of the Sarong Club [R. 236]. That his only contact with Ege was when Ege took over his, Boyd's, house in San Francisco, and knew nothing about the activities conducted there thereafter [R. 236]. Boyd denied knowing anything concerning Ege's activities or associates [R. 236]. Boyd stated he was only remotely acquainted with Bruno; that he had heard rumors that Bruno operated a house of prostitution, but thought Bruno too smart to be involved in such an operation [R. 237].

(10) RAY M. ANDRESS [R. 240].

I am, and was in June, 1955, a Special Agent for the Federal Bureau of Investigation [R. 240]. On June 21, 1955, I served warrant of arrest on him [R. 242]. Boyd said that "if taking telephone calls is conspiracy" that he had committed conspiracy [R. 243]. He identified Ege as the person he might have had telephone calls with [R. 243]. Boyd admitted that he had operated a house of prostitution at Scottsdale, Arizona, and that Constance Marie Bell and Marian Louise Berg had worked there for him as prostitutes [R. 243]. Boyd stated he went to Scottsdale about the first part of October, 1953, and that he was down there possibly three weeks [R. 243]; that he had contacted Berg and had talked to her about working at Scottsdale [R. 244]. Boyd stated that there had been several telephone conversations between himself and Ege from Arizona to San Francisco [R. 244].

I had a further conversation with Boyd on June 23, 1955 [R. 245], at which time Boyd said "I know that when Mrs. Bell left Scottsdale she came to Delano, California, but that arrangement was made by Mr. Ege. I had nothing to do with her coming up there to go to work" [R. 245]. Boyd also said "Mr. Bruno has been operating a house around Delano for several years" [R. 246].

Thereupon, the Government rested its case as to all defendants.

Appellant then made motions for judgment of acquittal, or, in lieu thereof motion to dismiss, and motions to strike

from the evidence, including all conversations outside the presence of the appellant and specifically of the testimony of Goldberg [R. 280]. The Court thereupon took under submission the motion for acquittal "until the conclusion of the case" [R. 280-281]. The motions to strike, it was stated by the Trial Judge, would be covered in the instructions to the Jury [R. 281].

Further Proceedings.

The appellant thereupon rested his case, without offering testimony [R. 281]. A request in his behalf that the Jury be instructed that testimony offered in behalf of other defendants was not to be considered against appellant was refused, the Court stating that it would be covered in his instructions [R. 281-283]. Evidence was thereupon received in behalf of the defendant Ege [R. 283-332].

All parties having rested, appellant renewed his motion, previously taken under submission, for a judgment of acquittal, or, in lieu thereof motion to dismiss. This was denied by the Trial Judge [R. 30].

The jury returned its verdict finding the appellant guilty under the second count of the indictment.

Counsel for appellant then made Motion for New Trial [R. 34-36], and Motion in Arrest of Judgment [R. 39-40], which were denied by the Court [R. 37]. Thereafter, the Court pronounced judgment [R. 38-39].

ARGUMENT.

I.

The District Court Erred in Denying Appellant's Motion for a Judgment of Acquittal Made at the Close of the Evidence Offered by the Government and Renewed at the Close of All Evidence and Renewed After the Verdict of the Jury for the Reasons That (A) There Was Insufficient Evidence to Sustain a Conviction, and (B) the District Court Was Without Jurisdiction to Enter Judgment Against the Appellant or to Impose Sentence Upon Him.

Function of Motion for Acquittal.

Rule 29(a) of the Federal Rules of Criminal Procedure provides in part:

“ . . . The Court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment . . . after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses . . . ”

In interpreting this rule, it was stated in *Curley v. United States* (C. A. D. C.), 160 F. 2d 229, 232, cert. den. 331 U. S. 837:

“ . . . a trial judge, in passing upon a motion for directed verdict of acquittal must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it an-

other way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted . . . In a given case, particularly one of circumstantial evidence, that determination may depend upon the difference between pure speculation and legitimate inference from proven facts.”

Necessary Proof of a Conspiracy.

A conspiracy can be proved in one of two ways: (a) direct proof of its formation, or (b) circumstances from which its existence can be properly inferred. In this case, there was offered no direct evidence of the formation of the alleged conspiracy. The government sought to establish the existence of the alleged conspiracy by proof of the overt acts alleged in the indictment and by other circumstances.

A conspiracy is generally defined as a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. The minds of the parties must meet and unite in an understanding way with the single design to accomplish a common purpose. There must be a concert of action, all of the parties working together understandingly, with a single design for the accomplishment of a common purpose.

Probably the leading authority today on the component parts of conspiracy is the case of *Marino v. United States* (9 C. A.), 91 F. 2d 691, cert. den. 302 U. S. 764. Each point in the following quotation from that case is exhaustively annotated by footnotes collecting all pertinent Supreme Court and Court of Appeals for the Ninth Cir-

cuit decisions. For the sake of brevity, these footnotes will not be repeated here:

“A conspiracy is ‘a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.’ *Pettibone v. United States*, 148 U. S. 197, 203, 13 S. Ct. 542, 545, 37 L. Ed. 419; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 465, 41 S. Ct. 172, 176, 65 L. Ed. 349, 16 A. L. R. 196; and see *United States v. Hutto*, 256 U. S. 524, 528, 41 S. Ct. 541, 543, 65 L. Ed. 1073, and *Weniger v. United States* (C. C. A. 9), 47 F. 2d 692, 693. It is a partnership in criminal purposes. The gist of the crime is the confederation or combination of minds.

“A conspiracy is constituted by an agreement; it is, however, the result of the agreement and not the agreement itself. No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be shown ‘if there by concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.’ *Fowler v. United States* (C. C. A. 9), 273 F. 15, 19.

* * * * *

“The crime is completed when an overt act (to) effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy, and is ‘an act to effect the object of the conspiracy.’ *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 535, 35 S. Ct. 291, 293, 59 L. Ed. 705. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must, however, accompany or follow the agreement, and must be done in furtherance of the object of it.”

Translated into the terms of the instant indictment, there could be no conspiracy to which appellant was a party until the minds of the appellant and at least one of his co-defendants met and united in an understanding way with a single design to accomplish the common purpose of transporting women between California and Arizona and California and Nevada for the purpose of prostitution. Until such meeting of the minds is shown to have occurred, the appellant is not a member or participant in the conspiracy here charged. If a conspiracy for the stated purpose previously existed between his co-defendants, and was continuing, the appellant knew the purpose of the conspiracy and joined it by a meeting of the minds with one of the co-conspirators, then and only then would he be bound by the acts of the others, whether taken before or after his joining the conspiracy, provided those acts were taken pursuant to achieving the purpose of the conspiracy.

(A) THERE WAS INSUFFICIENT PROOF TO SUSTAIN A
CONVICTION.

Just what is there in the record to indicate that there was ever any meeting of the minds between Bruno and either Boyd or Ege, or that Bruno knew of or became a party to a conspiracy to transport women between California and Arizona and California and Nevada for purposes of prostitution?

Four witnesses produced by the Government gave testimony wherein Bruno was mentioned. These were Goldberg [R. 220-230], Moe [R. 231-240], Andress [R. 240-266], and the complaining witness, Bell [R. 58-194, 269-279]. The testimony of Goldberg was stricken from the record [R. 352], and therefore need not be considered.

Clearly, the testimony of Moe and Andress, the Special Agents of the Federal Bureau of Investigation, of conversations which they had with Boyd at a time long after the conclusion of the alleged conspiracy, and at and subsequent to Boyd's arrest on the instant charge, respectively, cannot be considered against Bruno.

Tofaneli v. United States (C. A. 9), 28 F. 2d 581, 582;

Bartlett v. United States (C. A. 10), 166 F. 2d 920, 925.

We are left then with the testimony of the complaining witness, Bell, to determine the question of whether or not the appellant became a party to the alleged conspiracy. All of her testimony which directly or indirectly bears upon Bruno and his alleged participation is so brief that we have reproduced all pertinent portions of it in Appendix A of this brief (App., pp. 1-4).

This testimony may be briefly restated: Bell relates a telephone conversation with Ege, wherein he tells her that Delano was opening up, and suggested she should fly there from Scottsdale, Arizona, where business was bad. She was to use her own money to buy the airplane ticket. When she reached Los Angeles she was to call a telephone number in Delano which Ege gave her and "let him know what time my flight would arrive in Bakersfield." Ege told her the person she was to call was Joe Bruno. Thereafter, Bell flew to Los Angeles, and called the number in Delano. She does not remember who she talked to, a man or woman, but gave information about when her flight would arrive at Bakersfield and how to identify her. At Bakersfield, she was met by Bruno, who drove her to the house of prostitution in Delano. He

told her the house "was his and his old lady's." She worked there two to three weeks and saw Bruno there almost every night helping "count the money and check us out." The house was in charge of a girl named Bobby. Bell never had any money transactions directly with Bruno.

In determining the question of whether or not Bruno became a party to a conspiracy, the telephone conversation between Bell and Ege, being outside the presence of Bruno, cannot be considered.

As stated in *Bartlett v. United States* (C. A. 10), 166 F. 2d 920, 924:

"Where two or more persons have conspired to commit an offense against the United States, everything said, done, or written by each of them during the existence of the conspiracy and in furtherance thereof is admissible in evidence against the other. However, to render evidence of the acts or declarations of an alleged conspirator admissible against an alleged co-conspirator, the existence of the conspiracy must be shown and the connection of the latter therewith established by independent evidence. *The existence of the conspiracy cannot be established against an alleged conspirator by evidence of the acts or declarations of his alleged co-conspirators, done or made in his absence.* The acts or declarations of a conspirator, prior to the formation of the conspiracy or after its termination, are not admissible against his co-conspirators." (Emphasis added.)

In the case of *May v. United States* (C. A. D. C.), 166 F. 2d 1007, 1008, it is stated:

". . . The rules are that one defendant's connection with a conspiracy cannot be established by the

acts or declarations of *other* defendants in his absence, and that a defendant cannot be bound by the acts or declarations of *other* defendants until (a) the conspiracy has been established and (b) the defendant's participation in the conspiracy has been established."

See, also, *United States v. United States Gypsum Co.* (D. C. D. C.), 67 Fed. Supp. 397, 451 *et seq.*, where a three judge Court has collected and discussed the cases; *Glasser v. United States*, 315 U. S. 60, 62 Sup. Ct. 457; *Kuhn v. United States* (C. A. 9), 26 F. 2d 463; *Nibbelink v. United States* (C. A. 6), 66 F. 2d 178.

Thus, the Government's case boils down to this: Was the evidence of Bruno's meeting Bell at the Bakersfield, California airport subsequent to a telephone call from Los Angeles, California, driving her to Delano, California, telling her en route that the house was "his and his old lady's", and his subsequent presence on the premises at Delano, sufficient, standing alone, to prove that he was or became a party to any conspiracy for the interstate transportation of women for purposes of prostitution in the purview of Section 2421, Title 18, United States Code? For this is all of the direct evidence bearing on Bruno, eliminating acts and declarations of the alleged co-conspirators outside of his presence.

We think the answer must be an emphatic "no".

There is nothing in this evidence to show that he knew or should have known that Bell had traveled or contemplated traveling in interstate commerce, either at her own or another's instigation. Assuming that the telephone call Bell made from Los Angeles, California to a party unknown in Delano, California resulted in Bruno's appearance at the Bakersfield, California airport, there was cer-

tainly nothing indicated by that call, or its contents (assuming them to be admissible, which is not conceded) that would put Bruno, or even the person answering the call, on notice that Bell had started her trip from outside of the State of California. There is absolutely no independent evidence of any association or dealings of any kind between Bruno on the one side and either Boyd or Ege on the other, even at a remote time. There is no evidence of communication among them. Bell does not claim to have discussed with Bruno the origin of her trip, or her association or even acquaintanceship with Ege or Boyd.

Thus, assuming that a pre-existing conspiracy had been formed between Ege and Boyd to transport Bell or other women in interstate commerce (which is not conceded), there is nothing to even infer that Bruno had knowledge of it, its objects or its activities, much less joining in it to effect its purposes. Obviously, he cannot be bound by any acts or declarations of Ege or Boyd taken or made outside his presence unless it be shown by independent evidence that he had knowingly joined the conspiracy.

Bell's Trip From Arizona to California Not in Violation of Section 2421, Title 18, United States Code.

Under the testimony of the witness Bell (and disregarding the directly conflicting testimony of Ege, since it was received after this appellant had rested his case), the circumstances of her trip from Arizona to California were not in violation of Section 2421, Title 18, United States Code, under which the presently charged conspiracy is laid and therefore to which it is restricted. The events described would fall within the purview of Section 2422 of Title 18, United States Code, which is an entirely separate and distinct crime.

The pertinent language in the two sections is: Section 2421: "Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution"; and Section 2422: "Any person who shall knowingly persuade, induce . . . any woman or girl to go from one place to another in interstate . . . commerce . . . for the purpose of prostitution."

In *La Page v. United States* (C. A. 8), 146 F. 2d 536, appellant was the operator of a house of prostitution at Fargo, North Dakota, in which one Dora Thomas had been an inmate, but had left for a vacation at Minneapolis, Minnesota. Appellant telephoned to Thomas, asking her to return, which she did. As stated by the Court (p. 537): "Baldly, the evidence is that Dora Thomas made this interstate journey at her own expense because of appellant's telephone request and that both women understood the immoral purpose for which the trip was to be taken." Appellant was charged and convicted under Title 18, U. S. Code 398 (now 2421). The Court of Appeals reversed the judgment and ordered an acquittal, on the grounds that the offense, if any, was of Title 18, U. S. Code 399 (now 2422). Although a dissenting opinion was filed in the *La Page* case, the same Court of Appeals in a subsequent decision, unanimously approved the majority opinion of *La Page v. United States, supra*, in *Hill v. United States* (C. A. 8), 150 F. 2d 760.

See, also:

U. S. v. Saledonis (C. A. 2), 93 F. 2d 302;

Wagner v. United States (C. A. 5), 171 F. 2d 302, cert. den. 337 U. S. 944.

Even under *Section 2422, supra*, some active participation in the inducement and persuasion is required. One

cannot be convicted on proof only that he operated a house of prostitution to which apparently women were accustomed to come from other States.

McGuire v. United States (C. A. 8), 152 F. 2d 577, 579.

It was the contention of the prosecution, apparently, that the contents of the telephone conversation between Ege and Bell, and the subsequent meeting of Bell at the Bakersfield airport by Bruno, were sufficient to raise the inference of prior communication between Ege and Bruno, not only with relation to the placement of Bell in a house of prostitution in Delano with which Bruno was allegedly connected but also wherein Bruno was advised of the nature of the alleged pre-existing conspiracy between Ege and Boyd to transport women in interstate commerce. We think such inferences not only cannot be raised from the evidence, but are, in fact, repelled by it. Two facts clearly block such an inference: (1) the telephone conversation with Bell by Ege was apparently in circumvention of Boyd, in view of the fact that Ege got word to Bell through Berg that he would make the call, and the call was made to a telephone booth on the outskirts of Scottsdale, obviously for the purpose of concealment from Boyd; (2) Bell was instructed to call the Delano number *after* she reached Los Angeles, so that the telephone call to Delano making arrangements to be met would be intrastate, and that Bell's starting point after the telephone call to Delano would be within California. Other than Ege's hearsay statement to Bell, there is nothing to indicate that the number given her was in fact that of Bruno, or that Bruno did in fact have a telephone number in Delano. Actually, according to Bell, the house in Delano was managed by Bobby, who had all direct

financial dealings with her. It is proper to infer, if indeed any inference can be drawn from Ege's conversation with Bell, that Ege's prior arrangements for the reception of Bell at Delano, if any were in fact made, were made with Bobby. There is absolutely nothing in the record, by way of admission or by words or actions from which an inference could be drawn, that Bruno knew that Bell was traveling in interstate commerce.

Thus, three facts solidly emerge from the evidence involving the appellant Bruno:

(1) The acts performed by him were not in furtherance of the general conspiracy to "transport women between California and Arizona and California and Nevada";

(2) No knowledge by Bruno of the existence of a conspiracy has been shown;

(3) There is no evidence that appellant Bruno was a party to the formation of the conspiracy.

It would appear, therefore, that appellant comes squarely within the language of the decision of this Court in *Lee v. United States* (C. A. 9), 106 F. 2d 906, wherein it is stated (at p. 907):

"Appellant's motion for a directed verdict was denied. Appellant contends that the evidence is insufficient to show that he had any part in the alleged conspiracy. It is conceded that the evidence is insufficient to show that appellant was a party to the formation of the conspiracy. It is contended, however, that the evidence is sufficient to show that appellant joined the conspiracy, after its formation—not by joining in the agreement, but by the commission of the overt acts. While one 'who commits an overt act with knowledge of the conspiracy is guilty', he 'must know the purpose of the conspiracy,

however, otherwise he is not guilty.' *Marino v. United States*, 9 Cir., 91 F. 2d 691, 696, 113 A. L. R. 975, certiorari denied, 302 U. S. 764, 58 S. Ct. 410, 82 L. Ed. 593. See also *Craig v. United States*, 9 Cir., 81 F. 2d 816, 822, certiorari denied 298 U. S. 690, 56 S. Ct. 959, 80 L. Ed. 1408. Since there is no evidence to show that appellant knew of the existence of a conspiracy or its purpose, *the verdict cannot be sustained*. While there is sufficient testimony from which it might be inferred that appellant transported June Allen from Seattle to Portland for immoral purposes, he was not convicted of such an offense. He was convicted of the offense of conspiring to transport, cause to be transported and aiding and assisting in obtaining transportation of women for immoral purposes.

"No evidence discloses that appellant was a party to the formation of the conspiracy, and there is no evidence to show that when he committed the overt acts he had knowledge of such a conspiracy." (Emphasis added.)

(B) THE TRIAL COURT WAS WITHOUT JURISDICTION TO ENTER JUDGMENT AGAINST THE APPELLANT OR TO IMPOSE SENTENCE UPON HIM.

General Legal Principles Involved.

The Constitution of the United States, Amendment VI, provides, in part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of *the State and district wherein the crime shall have been committed*, which district shall have been previously ascertained by law. . . ."

(Emphasis added.)

Jurisdiction to hear a particular criminal case is assumed by the United States District Court on the basis of the allegations in the indictment or complaint that the offense took place in the jurisdiction of the Court to which the indictment or complaint is directed. However after a plea of "not guilty", the jurisdictional averments of the indictment are put in issue and must be proved just like any other of the averments of the indictment. In the absence of their proof, the particular District Court is without jurisdiction to enter judgment against the defendant or impose sentence upon him. Thus, the initial right to hear may be satisfied by the allegations of the complaint, but the right to determine is dependent upon the proof offered and received. Venue is as any other allegation in the indictment, and the burden of proving it rests upon the government. (*Moran v. Jones* (C. C. A. Tenn.), 264 F. 768; *United States v. Jones* (C. A. 8), 174 F. 2d 746. A motion for acquittal raises the question of venue, even though it is not specified as a particular ground. (*United States v. Jones, supra.*)

It is recognized that jurisdiction and venue of the crime of conspiracy, as denounced by *Title 18, United States Code, Section 371*, may lay in several Districts, *i. e.*, the District in which the conspiracy was entered into by the conspirators, or any two of them, or any District in which one or more overt acts in furtherance, and to effect the objects, of the conspiracy took place. See, for example, the opinion of this Court in *Woitte v. United States* (C. A. 9), 19 F. 2d 506, in which Mr. Justice Rudkin stated, at page 508:

" . . . It is contended that the charge that the parties conspired, at a time and place to the grand jurors unknown is insufficient, and that the overt acts charged were committed without the state

and district of Oregon and without the jurisdiction of the court. The time of the conspiracy was made definite by reference in the charge of conspiracy to the time set out in the charge of the overt acts (*Fisher v. United States*, 2 F. (2) 843); the place of the conspiracy was immaterial, *provided the overt acts were committed within the jurisdiction of the court* (*Hyde v. United States*, 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Brown v. Elliott*, 225 U. S. 392, 32 S. Ct. 812, 56 L. Ed. 1136; *Ford v. United States*, 47 S. Ct. 531, 71 L. Ed., decided by the Supreme Court April 11, 1927); . . . the overt acts charged . . . the transportation of the liquor thus transferred from the place of transfer into the state and district of Oregon, and the venue was therefore properly laid in that district." (Emphasis added.)

See also the decision of this Court in *Grigg v. Bolton* (C. A. 9), 53 F. 2d 158, 159, in which it is stated:

"By decisions of the Supreme Court of the United States, it is thoroughly settled as the law of conspiracy, that a conspirator may be prosecuted either at the place where the conspiracy is formed or where an overt act pursuant thereto is committed; and that a defendant so charged may be removed to the district where such overt act was committed, even though he had not, prior thereto, been within such district; also that no right secured by the Sixth Amendment to the Constitution is violated thereby. *Hyde v. Shine* (a review of proceedings on removal), 199 U. S. 62, 25 S. Ct. 760, 50 L. Ed. 90; *Hyde and Schneider v. U. S.* (a review after conviction in the same case), 225 U. S. 347, 32 S. Ct. 793, 799, 56 L. Ed. 1114, Ann. Cas. 1914A, 614. In the decision last cited, the court declared that the conspiracy

alone did not constitute the offense. 'It needs,' said the court, 'the addition of the overt act. Such act is something more, therefore, than evidence of a conspiracy. It constitutes the execution or part execution of the conspiracy, and all incur guilt by it, or rather complete their guilt by it, consummating a crime by it cognizable then by the judicial tribunals, *such tribunals only then acquiring jurisdiction.*'" (Emphasis added.)

An even later statement by this Court, enunciating the same principles is in *Smith v. United States* (C. A. 9), 92 F. 2d 460, 461, stating:

"The objection to the indictment is first, that it fails to state where the conspiracy was formed. There is no merit in this contention. The telephone from Honolulu to Los Angeles brings the conspiracy both within the Territory of Hawaii and the Southern District of California. An overt act is more than evidence of a conspiracy. It is a part of the conspiracy itself, and where, as here, it is alleged as occurring in the Territory and in California, it is sufficient to make it an offense within the statute, even though the indictment had stated that the place in which the conspiracy was formed is unknown. *Hyde v. U. S.*, 225 U. S. 347, 360, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Brown v. Elliott*, 225 U. S. 392, 400, 32 S. Ct. 812, 56 L. Ed. 1136. *A conspirator may be tried either at the place where the conspiracy is hatched or where the overt act is committed.* *Hyde v. U. S.*, *supra*, 225 U. S. 347, 360, 32 S. Ct. 793, 56 L. Ed. 1114, Ann. Cas. 1914A, 614; *Grigg v. Bolton* (C. C. A. 9), 53 F. (2) 158, 159." (Emphasis added.)

The Indictment Herein.

The second count of the Indictment presently before this Court [R. 3-6] alleged:

“That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, *at a time and place to the Grand Jury unknown*, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.” (Emphasis added.)

Obviously, in and of itself, this statement does not show jurisdiction within the Northern District of California. Nor was any direct proof of the place where the conspiracy was formed offered in evidence. Even as to the *existence and formation* of a conspiracy, the Government contented itself with the inference which it claims arises from the proof of the overt acts that there was in fact a conspiracy existing within the time limits set forth in the indictment. Thus we must turn to the overt acts, and the proof offered in support of them, to establish the jurisdiction of the District Court for the Northern District of California, as suggested in *Woitte v. United States*, *supra*, and *Smith v. United States*, *supra*.

The second count of the indictment [R. 3-6] then proceeds to charge that “during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof” one or more named defendants committed some fourteen overt acts, each of which is specified. Eight

of the alleged overt acts are laid, in whole or in part, in the Northern District of California. The other six are laid in different States or different Districts. As it was not contended at the trial that any of the last-mentioned six acts took place in the Northern District of California, in whole or in part, we can direct our attention to the eight in which definite allegations were made in the indictment that they took place in whole or in part in the Northern District of California, for the purpose of testing the jurisdiction of the trial forum. The overt acts in question are numbered 1, 2, 3, 4, 5, 8, 10, 11 and 12, respectively. It is the contention of the appellant that not a single one of these overt acts, as alleged, was proven. As to some, no evidence whatsoever was offered; as to some, the Government's purported witness to the event flatly denied the existence of the fact alleged; as to some, the Government offered evidence clearly negating the alleged events; and finally, the Government completely failed to show that any of the events, even by inference, were "in the furtherance . . . and to effect the objects" of the claimed conspiracy.

The overt acts relied upon to confer jurisdiction on the trial court will be considered individually.

Overt Acts Alleged to Have Occurred in Northern District of California.

(1) *Overt Act 1.* The indictment alleges [R. 4]:

"In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege went to 2545 Noriega Street, San Francisco, California, State and Northern District of California."

The bill of particulars furnished by the Government [R. 16] places the time as "On or about June 15, 1953."

No evidence whatsoever was offered in support of this overt act. In fact, the only reference in the record to the address 2545 Noriega Street, was the statement of the witness Giomi that at the time of his testimony, September 27, 1955, he was presently operating a market at that address [R. 197]. There was no suggestion that Ege or Boyd, alone or together, had ever been at that address. There was no evidence that either Boyd or Ege were physically present in San Francisco during the month of June, 1953.

(2) *Overt Acts 2 and 3.* As Overt Act 2, the indictment alleges "In September, 1953, defendant Edward Raymond Ege took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said city" [R. 4]. The bill of particulars [R. 16] places the time as: "On or about September 15, 1953."

As Overt Act 3, the indictment alleges: "In September, 1953 at Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell" [R. 4]. The bill of particulars [R. 16] places the time as "On or about September 15, 1953."

The occasion on which Bell's being at the Sarong Club and at 395 Monterey Boulevard occurred on the same date was with reference to the day upon which Bell first met Ege, and concerning which Bell was the sole witness. She testified that she met Ege for the first time at the Sarong Club [R. 61, 94], where she had gone with a friend named Rosalind, who also was a dancer in the Follies, for the express purpose of being introduced to Ege [R. 100]. In

response to Ege's inquiry as to why she was there, she stated that she had come to see him [R. 100]. That evening [R. 101], she and Rosalind went to Ege's residence at 395 Monterey Boulevard [R. 95] where they discussed prostitution [R. 65], the way it was run and the amount of money to be made [R. 65-67, 97-98]. She decided to go into the business of prostitution for the money to be made [R. 65-67, 97]. Bell stayed at Ege's residence for a week or so on that occasion, and then went to Folsom, California [R. 68] with a girl named Judy Berg, who drove her there [R. 104] to a house of prostitution [R. 69], where she engaged in prostitution for a week or a few days more than a week [R. 69]. All of these events definitely occurred prior to September 15, as that was the date of her sister's birthday, and she definitely recalled that all of these events occurred prior to her sister's birthday [R. 172].

Thus, Overt Act 2 did not take place at all, since Ege did not "take" Bell from the Sarong Club to 395 Monterey Boulevard, but she went there of her own accord with her friend, Rosalind. As to Overt Act 3, this obviously did not take place "on or about September 15, 1953." From the witness' own testimony, her initial conversation with Ege could not have occurred *later* than September 1st, and was probably before that. But of even greater importance, there is nothing in these contacts from which it could be even inferred that there was a pre-existing conspiracy among the defendants or any two of them, nor that they were in furtherance or to effect the objects of a conspiracy to transport women between California and Arizona or Nevada. Since the conspiracy sought to be proved involved only Bell, and no proof of a prior agreement among the defendants was shown, the conspiracy, if any, could not be "hatched" until she appeared

on the scene. Since neither Boyd nor Bruno were present at these meetings, any conspiracy would necessarily have to be formed thereafter.

(3) *Overt Act 4.* As Overt Act 4, the indictment alleges: "In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California" [R. 5]. The bill of particulars [R. 16] places the time as: "On or about October 13, 1953."

There is absolutely no proof in the record that Ege drove an automobile from Folsom, California, to San Francisco at any time in the month of October, 1953, or that he had been in or near Folsom during that month, or at any time later than prior to September 15. Actually, this overt act could not have been intended to involve the witness Bell, as, according to Bell's testimony, and that of other Government witnesses, Bell was in Arizona on or about October 13, as will be discussed in connection with Overt Act 5, below.

(4) *Overt Act 5.* The indictment alleges [R. 5]; "In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell." The bill of particulars [R. 16] places the time as: "On or about October 20, 1953."

The witness Bell testified that no such event took place at any time, and that she had not testified before the grand jury that it had [R. 123, 165, 184]. Actually, no such event *could* have taken place on or about the date indicated, as demonstrated by other Government witnesses.

Ellingson (owner of the house in Scottsdale, Arizona, allegedly used by Boyd as a house of prostitution) testified that Boyd had vacated it by October 20 [R. 203]; Rathjen, clerk of El Rancho Motel in Phoenix, where Boyd lived during the Scottsdale episode, testified that Boyd checked out on October 21 [R. 204-205]; Briley, the bartender of the Pink Pony at Scottsdale, testified that he visited the house of prostitution and had various conversations with Boyd, including the matter of Briley sending customers to the house, stated that the operation was only for about two weeks, commencing the first week in October [R. 209-210]. Each of these witnesses had been interviewed by the government agents during the course of the investigation [R. 260].

Although reluctant to raise the point, we cannot but wonder if the allegations of the indictment and the bill of particulars in this and similar matters were drawn and supplied to the defendants in good faith.

(5) *Overt Act 8.* As Overt Act 8, the indictment alleges [R. 5]: "In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California." The bill of particulars [R. 16] places the time as: "On or about October 25, 1953."

According to the evidence, Bell had but one telephone conversation with Ege while she was in the State of Arizona [R. 76-77, 91-92, 274-275]. There is nothing whatsoever in the record to indicate that Ege was talking from San Francisco or any other point in the Northern District of California. Thus, the fact of this phone call is without probative value so far as proof of an act in the Northern District of California is concerned. Its

weight so far as aiding in the establishment of a conspiracy is involved will be discussed under another heading in this brief.

(6) *Overt Act 10.* As Overt Act 10, the indictment [R. 5-6] alleges: "In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell." The bill of particulars [R. 16] fixes the time as "On or about November 5, 1953."

No evidence of such an event in the Northern District of California at any time was offered by the Government. The prosecutor offered the testimony of Bell that Bell had earned seven or eight hundred dollars while in Delano, and that Ege had gotten it from her in Fresno [R. 79, 81]; but on cross-examination, this amount shrunk to from two to three hundred dollars and not more than four hundred [R. 140]. She testified that the event took place in Fresno [R. 186], and that she had not testified before the grand jury that it occurred in San Francisco [R. 186]. This Court will undoubtedly take judicial notice that Fresno is in the Southern District of California.

(7) *Overt Act 11.* As Overt Act 11, the indictment [R. 6] alleges: "In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California." The bill of particulars [R. 16] fixes the date as: "On or about November 10, 1953."

No testimony was offered to the effect that Ege drove Bell to the County of Yolo on the date indicated, or at any other time. Bell testified that before going to Barstow, she worked in houses of prostitution at Sacramento and

Isleton for a few days [R. 81]. That she was at a town named Yolo, about five miles from Sacramento for about a week [R. 143-144]; and was at Isleton for about a week [R. 145].

Moreover, here is an act, even if it had been proven, which could not by any stretch of the imagination be proof of the conspiracy as alleged in the indictment, or in furtherance thereof.

(8) *Overt Act 12.* As Overt Act 12, the indictment [R. 6] alleges: "In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California." The bill of particulars [R. 16] fixes the date as "On or about December 7, 1953."

Here again we have the situation of an over act which the Government witness Bell clearly denies as ever having happened [R. 187]. She denies that she testified before the Grand Jury that it did occur [R. 187].

Contention of Appellant.

It is the contention of the appellant herein that the evidence having failed to establish that the conspiracy was formed in, or, in the alternative, the conspiracy having been formed that one or more acts alleged in the indictment to have been done in furtherance thereof and to effect the objects thereof were taken or done within the Northern District of California, then the prosecution must fail. This, because the Northern District of California has not been proven to be the proper venue for the indictment, and the Court was thus without jurisdiction. If this be true, then the appellant has been deprived of the protection of the Sixth Amendment of the Constitution, and the judgment of conviction should be reversed.

II.

The Appellant Was Denied a Fair Trial in That (A) Evidence of Appellant's Reputation and Character Was Introduced as Part of Government's Case, (B) the Jury Was Prejudiced by Remarks of the Prosecutor and Trial Judge as to Safety of Government Witness, (C) a Prejudicial Variance Developed Among the Indictment, the Bill of Particulars and the Government's Evidence, and (D) a Separation of the Counts of the Indictment for Trial Was Denied by the Trial Court.

A. Evidence of Appellant's Character and Reputation Was Erroneously Introduced as Part of Government's Case.

Probably the grossest single error occurring during the trial was the introduction by the prosecution, *with the assistance of the trial judge*, of evidence seeking to establish the reputation of the appellant Bruno as a pimp. As such, this was a gratuitous attack upon his character, flouted primary concepts of the laws of evidence, and clearly deprived the appellant of a fair trial.

It is a universal rule, so fundamental and firmly established as to scarcely require citation of authority that the prosecution cannot initially attack the defendant's general character or reputation. It is only when these matters have been put in issue by the defendant himself, by taking the stand as a witness or by introducing evidence of his own good character, that the prosecution can mount an attack on his reputation for character or credibility as a witness. Such testimony is then and only then received as an exception to the hearsay rule.

See:

Wigmore on Evidence, 3rd Ed., 357, and authorities there collected;

22 *Corpus Juris Secundum* 676, and authorities there collected.

The testimony referred to is that of John Goldberg, a self-described lingerie salesman [R. 221]. It was received over vigorous and continuous objections of defense counsel. Its damning nature and the effect it must necessarily have had upon the minds of the jury can best be demonstrated by referring to the testimony itself. For this purpose, we have set it forth in full, but eliminating the intermingled objections of counsel and colloquies with the trial judge, as Section B of the Appendix hereto, and reference is made thereto.

By the testimony of Goldberg, the prosecution, ably assisted by the trial judge, succeeded in putting before the jury the hearsay statement that the appellant Bruno was known as the "old man" of one Kitty in Delano, and that such term meant that he was a "fish" or pimp. Even the witness recognized the gross hearsay nature of his own testimony. It is also obvious that the prosecutor knew exactly the nature of the testimony he intended to elicit from the witness, as he drove persistently to his goal. And the Court's participation indicates his desire to assist the prosecutor in achieving that objective. Such testimony must necessarily have had a prejudicial effect upon the minds of the jurors, so that no instruction, even if promptly made, would have eradicated it from their consciousness nor palliate its impact.

There was no way in which the defendant could meet such testimony. Testimony of leading citizens that *they*

had never heard such gossip would not accomplish it. His own credibility had been utterly destroyed, without ever having taken the stand, or offered testimony.

Counsel for appellant, at the close of the government's case, moved to strike the above testimony before proceeding with the defense. The Court, however, stated that all such matters would be taken care of in his instructions to the jury [R. 280-281].

In that posture of the case, with the evidence of appellant's alleged character and reputation as a pimp still fresh in the jurors' minds and still before them, appellant could hardly take the stand in his own defense.

The statement of the Judge during the course of rather lengthy instructions that: "I further instruct you that the testimony of the witness Goldberg—you remember him, the lingerie entrepreneur who came here—is stricken from the record, and that you are not to consider it for any purpose whatsoever" [R. 352], could not have cured the fatal defect occasioned by the original admission of the testimony and the refusal of the Court to strike it before the appellant proceeded with his defense, nor have expunged its impact from the jurors' minds.

B. Jury Was Prejudiced by Prosecutor's Statement That Complaining Witness Feared for Her Safety.

At the outset of the cross-examination of the witness Bell, the following occurred [R. 92-93]:

"(By Mr. Stout, Counsel for Ege):

Q. Where are you living at the present time?

A. In San Francisco.

Q. Where in San Francisco?

Mr. Sparrow (Assistant U. S. Attorney): If Your Honor please, I will object that as incompetent, irrelevant and immaterial.

The Court: Overruled. I can't see any objection. I can't see any objection in this young lady telling us where she lives unless there is some obscure reason that would on the part of the Government prevent it.

* * * * *

Mr. Sparrow: The witness is apprehensive of possible retaliation against her.

Mr. Stout: Just a moment.

Mr. Sparrow: And she is reluctant.

Mr. Stout: I object to any statement of that nature.

The Court: You wanted to know. But this court will amply protect her. I will see that she has all the protection that is necessary.

Mr. Stout: Well, will Your Honor instruct the jury that they are not to make any conclusion from the remarks of Mr. Sparrow about retaliation?

The Court: I will do that at the proper time."

Later, during the course of same cross-examination, the following occurred [R. 146]:

"Q. (By Mr. Stout): You testified on direct examination in response to a question by Mr. Sparrow that you gave that money to Ege, is that correct?

A. I don't know. I am just getting so—

Q. A man is on trial here. I have to ask these questions.

Mr. Sparrow: If Your Honor please, I will object to these speeches—

The Court: Never mind the extra-curricular remarks, counsel.

The Witness: What has that got to do with his trial, being on trial?

The Court: Just a moment. Just a moment. Just calm yourself. Now take it easy. You have been

doing very nicely. Just answer the gentleman's questions. If you don't remember, just say so. Don't let him get you excited. I'll protect you. That is what I am here for.

Mr. Stout: I hope she doesn't need protection, Your Honor.

The Court: If she does, she will get it.

Mr. Stout: I won't put her in a spot where Your Honor will have to protect her. I assure you of that.

The Court: You better not."

The statement of prosecuting counsel that the witness feared retaliation, and the trial judge's statements of protection in connection therewith, gratuitously repeated when the witness was being pressed for answers on material matters, must necessarily have created an adverse impression in the minds of the jurors extending not only to the defendants, but to their respective counsel as well. The highly prejudicial nature of these matters appears so clearly on their face, that further comment is not deemed necessary, except to point out that at no time did the Court, either during the reception of evidence or in his instructions advise the jury not to draw conclusions from the remarks indicated.

C. A Prejudicial Variance Occurred Between the Indictment, the Bill of Particulars and the Proof Offered by the Government.

As will be shown under this heading, considerable variance occurred between the indictment, the bill of particulars and the proof as to the occurrence of the overt acts set forth in the indictment and the dates upon which they occurred, if at all. While it may be conceded that no

single one of the variances, standing alone, would constitute a fatal variance, nevertheless, considered together, they amply demonstrate that the appellant was misled (in some instances, apparently, deliberately), and that the over-all effect was to deprive him of a fair trial.

The attention of this Court is directed to the following variances:

(1) The indictment refers to the conspiracy as being one to transport *women* (plural) in interstate commerce. The bill of particulars refers to Constance Marie Bell as being "one of the women" whom the defendants conspired to transport between California and Arizona and "one of the women" whom the defendants conspired to transport between California and Nevada. However, at the trial, no claim was made nor evidence offered that the alleged conspiracy contemplated more than the one woman, Constance Marie Bell. The conspiracy thus involving only the contemplated transportation of Bell, and in the absence of evidence that at least two persons had entered a conspiracy to transport women or woman unknown, who later materialized in the person of Bell, then there could hardly have been a conspiracy until Bell became known to at least one of the conspirators. Since there was no direct proof of the formation of the conspiracy, and the government relied entirely upon the proof of overt acts as establishing it, then, the earliest the conspiracy could have been formed would be subsequent to latter part of August or the first of September, when Bell met Ege, *at her own request and suggestion*. Thus, Overt Act 1, alleged to have taken place "on or about June 15, 1953", was prior to the formation of any alleged conspiracy. Moreover, if the act referred to was the occasion of Ege taking over Boyd's lease on the Monterey

Boulevard residence, the government's own evidence showed definitely that this event occurred on or before May 15, 1953 [R. 196], which fact was presumptively known to the prosecution, at least when the bill of particulars was furnished.

Thus, assuming that a conspiracy was in fact formed, contemplating interstate transportation of Bell, when is the earliest that it could have been formed? Depending on the overt acts to establish the existence of a conspiracy, the first acts which include concert of action of any two persons looking to the interstate transportation of Bell, was the agreement among Ege, Berg and Bell, looking to Bell's accompanying Berg to Arizona, to work in the house of prostitution of Boyd, and the subsequent trip to Arizona by Bell with Berg and her establishment in the house operated by Boyd. This is the subject of Count One of the indictment, which charges Ege alone with the substantive offense transporting a woman in interstate commerce from San Francisco to Scottsdale for the purpose of prostitution, and lays the time as "on or about the 17th day of October, 1953". The bill of particulars names the "woman" involved as Constance Marie Bell. However, this is not the conspiracy charged in the indictment, either as to parties involved, the time elements involved, nor as an overt act. There was no claim advanced that Judy Berg was one of the "other persons to the Grand Jury unknown" referred to in the indictment. The bill of particulars with relation to the conspiracy count lays the time of Ege giving Boyd's phone number in Arizona to Bell in San Francisco (Overt Act 5) as October 20, 1953; the time of Bell, in Arizona, phoning Boyd (Overt Act 6) as October 22, 1953, and the time of Bell arriving in Delano, California (Overt Act 9) as October 27,

1953. It would thus appear from the indictment and bill of particulars that Bell had made two trips to Arizona, and would appear from the evidence that the government had failed to prove the second of the two trips, since only one trip was indicated.

However that may be, nevertheless the conspiracy could not have been formed until there had been some communication, direct or indirect, between Ege and Boyd or Bruno, or some meeting of their minds relative to the proposed transportation of Bell to or from Arizona. The evidence fails to show that Boyd, at least directly, had anything to do with the plan to send Bell to Arizona. Bell testified [R. 114] that in a conversation at the Sarong Club at which were present Berg, Ege and herself, Berg stated that she (Berg) was going to Phoenix, and a discussion was had about it and that there was a job there. Subsequently [R. 116-117], it was determined that Bell would accompany Berg, and Ege gave Bell \$50 to defray her part of the costs of the trip. Apparently, Berg had been in some type of communication with Boyd, as she had the means of communicating with him by telephone at Scottsdale when she reached Phoenix, which neither Ege nor Bell possessed. Berg's conversation with Ege and Bell, referred to above, together with Boyd's statement to Briley that he was expecting two girls from California [R. 212], would bear this out. If a conspiracy existed among anyone to transport Bell to Arizona, then such conspiracy would have come to an end upon the arrival of the two women in Arizona, for the entire purpose of the conspiracy would thus have been completed. And this view of the evidence would appear to comport with all the facts, since Boyd's activities, so far as the record is concerned, came to an end with the

closing of the house at Scottsdale, and his checking out of the El Rancho Motel at Phoenix. Boyd had nothing whatsoever to do with the telephone conversation between Ege and Bell in Arizona, nor in her subsequent trips to California and to Nevada; and, in fact, drops entirely out of the evidentiary picture on the occasion of Bell's departure from Arizona.

The trip by Bell to Delano, California, if pursuant to any conspiracy (which is not conceded), was one of which Boyd was not only not a co-conspirator, but knowledge of which was apparently kept from him (*vide* the placing of the surreptitious telephone call from Ege to Bell at the gasoline station). And knowledge of the interstate travel was apparently to be kept from Bruno (*vide* the instructions to Bell to phone Delano *after* she arrived in California).

The third interstate transportation, namely from Barstow to Las Vegas, was clearly not pursuant to a conspiracy on the part of anyone, unless Bell and Ege can be considered as co-conspirators. This was a trip not pre-arranged by anyone, was at the request of Bell, and was occasioned by the emergency arising from her arrest at Newbury.

Thus, the proof, instead of proving one general conspiracy, may have been indicative of several, none of which fell within the scope of the general over-all conspiracy alleged.

The exact line has not as yet been drawn, apparently, as to at what point the fact that several conspiracies, rather than the one general conspiracy as alleged, has been proven, the variance is fatal. This feature of the law is still in the process of development. See *Berger*

v. United States, 55 S. Ct. 629, 630; the modification of the ruling of the *Berger* case in *Kotteakas v. United States*, 66 S. Ct. 1239; and, finally, the discussion of both Supreme Court rulings by this Court in *Canella v. United States* (C. A. 9), 157 F. 2d 470, 477-478.

Here, however, the variance was clearly harmful, and does not come within the harmless error statute (28 U. S. C. 391), as was suggested in the *Berger* case.

Actually, it would appear that the government has attempted to bind together a number of acts involving Ege and Bell, and by dragging in Boyd and Bruno (who participated in separate and unrelated acts) by their boot-heels, to make a conspiracy of it. Thus, the government has produced the hub, and a loose spoke or two, but no rim to tie them together in a related whole.

(2) There is set forth in the Appendix to this Brief as Section C, showing the acts alleged by the indictment as the overt acts, the dates alleged in the indictment, those alleged in the bill of particulars furnished to the appellant, and the nature of the evidence produced in support of each alleged overt act.

Referring to this exhibit, as well as to the discussion heretofore set forth in this Brief relative to the jurisdiction and venue of the trial court, it will be observed that of the fourteen overt acts, no evidence was offered as to four of them, and the government witness relied upon flatly denied an additional four. Some evidence was offered by the government in support of Overt Acts numbered 2, 3, 8, 9, 13 and 14.

As to Overt Acts 2 and 3, as previously indicated, there is no showing that if these acts occurred, they were pursuant to any conspiracy theretofore formed.

As to Overt Act 8, although evidence was offered that Bell, in Arizona, had a telephone conversation with Ege, there was no evidence that Ege was in San Francisco. Although in direct examination Bell testified to another telephone conversation with Ege, the call allegedly being made from Arizona to San Francisco [R. 91-92], on cross-examination she emphatically denied the latter conversation, saying she was unable to reach Ege on her calls [R. 274-275]. Moreover, the date of the one conversation held could not have been on or about October 25, as alleged in the bill of particulars, as Boyd gave up his tenancy of the Scottsdale house by October 20 [R. 203].

Overt Act 9, if it occurred at all, could not have occurred on the date indicated in the bill of particulars (October 27), for the reason that Bell must necessarily have left Scottsdale not later than October 20.

Attention is directed to the disparity between the amount alleged in the indictment (\$900) as Overt Act 13, and the amount testified by Bell (\$100 or so).

Neither Overt Acts 13 or 14 were shown to have been taken pursuant to any conspiracy among the defendants named in the complaint, or of a continuing conspiracy of which they had become members.

Two reasonable inferences emerge:

(1) In supplying the overt acts set forth in the indictment, the grand jury either carelessly or deliberately disregarded the evidence of the witness Bell before it as to the occurrence or non-occurrence of certain events.

(2) In supplying the bill of particulars, the United States Attorney either deliberately or carelessly disregarded the evidence before him as to the non-occurrence

of certain of the events alleged, and as to the dates upon which others did occur.

In either event, the result was to mislead the appellant to his disadvantage, to prejudice him with the jury, and to deprive him of a fair trial.

D. A Separation of the Counts of the Indictment for Trial Was Erroneously Denied.

The refusal of the trial court to grant appellant's motion for a severance of counts one and two of the indictment for trial [R. 24-25], resulted in prejudice to this appellant.

It is conceded that such a motion is addressed to the sound discretion of the trial court. Nevertheless, when it is apparent from the pleadings that the joinder will prejudice one of the defendants, as is the case here, it would be an abuse of discretion to deny the motion. The trial itself clearly demonstrates that the motion was well taken.

Under the first count, that is, the substantive offense against Ege, testimony regarding the early meetings of the witness Bell, their conversations, and their activities in San Francisco and Folsom relative to prostitution, were undoubtedly admissible under the substantive count against Ege. But, since no conspiracy was shown to have existed at the time of these events, nor could any be inferred, as pointed out hereinbefore, they were not admissible against Bruno or Boyd under the second count. Only the statements and admissions of a co-conspirator made during the course of the conspiracy and for the purpose of furthering its object would be admissible against them. Otherwise, such statements or admissions are hearsay. Having denied appellant's motion for a severance, the Court then proceeded to over-rule his objections of hear-

say, and finally denied motions to strike such evidence. Clearly, this was in prejudice of the appellant's right to a fair trial, and was reasonably foreseeable prior to the commencement of the trial.

III.

The Trial Court Erred in Refusing to Require Special Verdicts on the Overt Acts Alleged in the Indictment.

It has heretofore been pointed out that a great disparity existed between the allegations of the indictment and the proof offered in support thereof. Of the fourteen overt acts alleged in the indictment, and relied upon by the Government to establish the formation and existence of the conspiracy, and the doing of at least one overt act in the Northern District of California to effect its purpose, no proof was offered as to six, four were flatly denied by the Government witness involved, and there is at least substantial ground for the position that the remaining four were not shown to have been in furtherance of the alleged conspiracy.

Furthermore, subsequent to this appellant having rested his case, the defendant Ege took the stand in his own behalf [R. 283-332] and denied each of the overt acts in which he was alleged to have participated.

While it is the position of the appellant Bruno that he can neither avail himself of nor be bound by the testimony of Ege, nevertheless for the purpose of determining the guilt of Ege as a co-conspirator, his denials were before the jury.

Under the circumstances—that is, where the Government has abandoned some of the overt acts alleged, where as to others the Government has introduced proof denying

them, and where uncertainty (at least) as to the fact, the dates, and whether or not, if taken, the remainder were pursuant to or to effect the purpose of, a conspiracy—the Court should have acceded to the requests of the defendants (including appellant) for special verdicts by the jury on the overt acts.

The law is clear that at least one overt act must be proven beyond a reasonable doubt.

The law is equally clear that the members of the jury must unanimously find that at least one of the overt acts has been proven beyond a reasonable doubt.

Even a defendant in a criminal case is entitled to be brought down by a rifle and not a shotgun.

Conclusion.

It is respectfully urged that the judgment of conviction as to the appellant Joseph Victor Bruno be reversed.

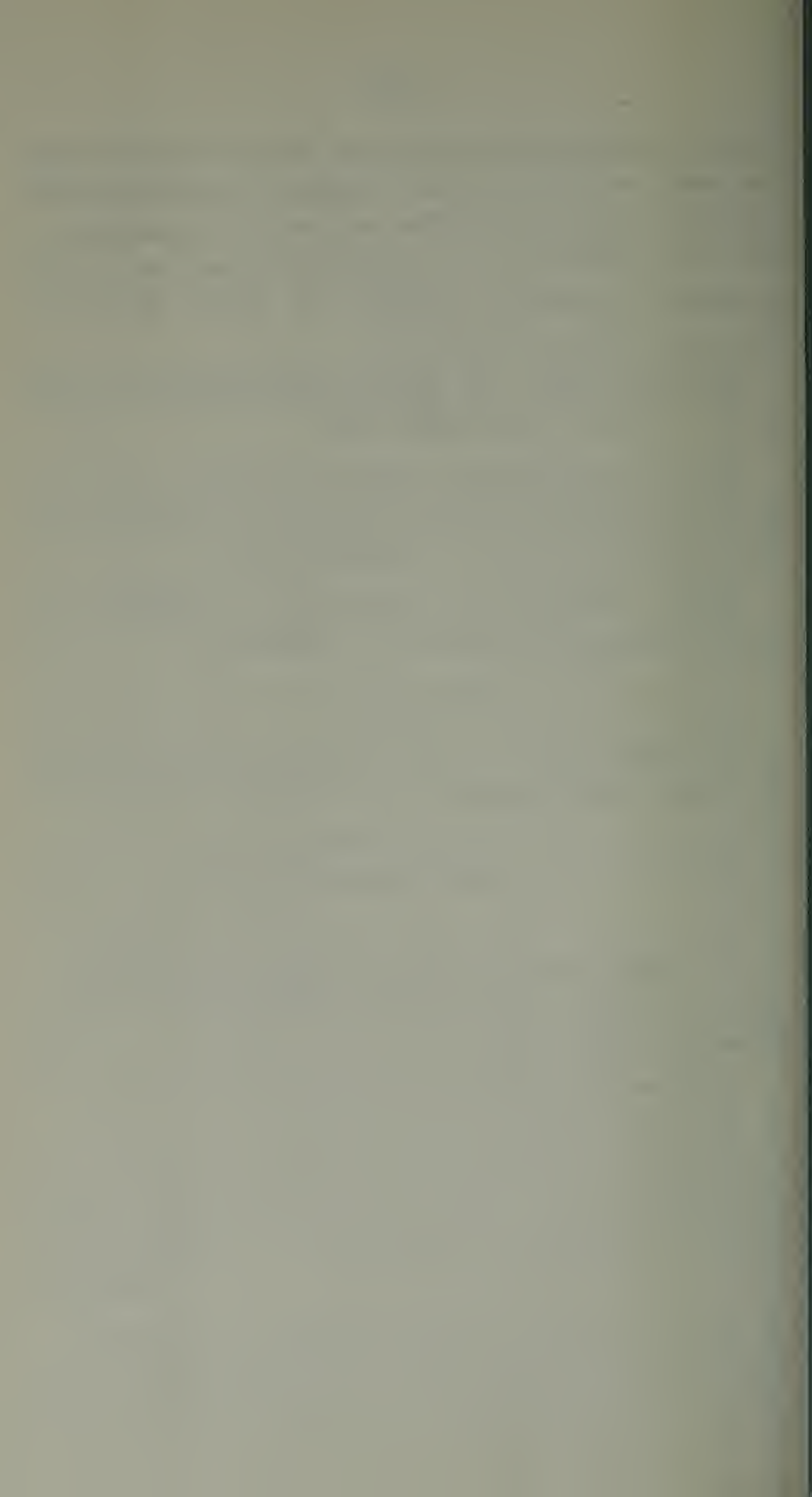
LILLIE & BRYANT and
WALTER M. CAMPBELL,

By WALTER M. CAMPBELL,

Attorneys for Appellant Joseph Victor Bruno.

ROBERT B. McMILLAN,

Of Counsel.





APPENDIX A.

Section A.

PERTINENT TESTIMONY OF CONSTANCE MARIE BELL REGARDING BRUNO.

"Direct Examination.

"Q. I believe you said you had a conversation—you got word that Ege was going to call you. Did he call you? A. Yes.

Q. And did you have a conversation with him over the telephone? A. Yes.

Q. What was that, would you tell us the substance of that conversation?"

(Objections of hearsay overruled.)

A. It was that business had been bad. I mean, he asked me how the business had been, and I said bad, and he said Delano was opening, and so I went to Delano.

Q. Who suggested going to Delano? A. Eddie.

Q. By Eddie you mean the defendant Ege? A. Yes.

Q. Did you have any conversation with him as to how you were going to get there? A. Well, I was going to fly because they were short on girls there and they had no girls." [R. 76-77.]

* * * * *

"Q. Did you have any discussion in this telephone discussion with the defendant Ege as to how you would pay for this airplane ticket? A. Out of the money that I made.

Q. Did the defendant Ege give you any instructions over the telephone as to who you were to contact in Delano? A. Well, when I got to Los An-

geles I was to call in to Delano in to this number that he gave me and I was to let him know what time my flight would arrive in Bakersfield.

Q. Who was the person you were to call? Did Eddie Ege tell you who that was? A. Joe Bruno." [R. 78.]

"Q. And when you arrived in Los Angeles did you in fact call that number? A. Yes, I did.

Q. And when you arrived in Bakersfield, was anyone waiting there to pick you up? A. Yes, there was.

Q. And who was that? A. Joe Bruno." [R. 78.]

* * * * *

Q. And where did he take you, if anywhere, from the airport? A. He took me to Delano and the house—his house there.

Q. He took you to Delano? Did you have any conversation with him as to whose house that was? A. Well, he told me it was his and his old lady's.

Q. He said it was his and his old lady's? A. Yes.

The Court: Whom did he mean by his old lady, do you know that? A. A girl named Kitty.

The Court: He didn't mean his mother, did he? A. No, he meant this girl.

Mr. Sparrow: Q. This girl you knew as what? A. Kitty.

Q. Kitty? A. Uh-huh.

Q. Did you meet Kitty at the place in Delano?

A. No, she wasn't there. She was sick.

Q. And did you work in this place in Delano?

A. Yes, I did.

Q. And for about how long? A. For a couple of weeks, for about three weeks, I'll say." [R. 78-79.]

* * * * *

"Q. Do you remember about how much you earned? A. Well, quite a bit, about seven or eight hundred dollars." [R. 79.]

* * * * *

Q. While you were there at the house in Delano did you observe the defendant Bruno about the house? A. Oh, yes, he was there.

Q. Would you say he was there many times? A. He was there almost every night except a couple of times.

Q. And what if anything did you observe him do there at the house? A. He would sit in the kitchen all night until it was time to check out.

Q. Then what would he do, if anything? A. He would help count the money and check us out." [R. 79-80.]

"Cross-Examination.

Q. And do you recall from where you placed the call in Los Angeles? A. From the airport there.

Q. And when you placed the call, did a man or a woman answer at the other end? A. I can't remember.

Q. Do you recall a conversation which you had at that time? A. Just that I was—what time I was, my flight, would get into Bakersfield. But I don't know who I talked to, if I talked to a woman or a man." [R. 173.]

* * * * *

"Q. And who was it you say met you at the airport? A. Joe Bruno.

Q. Joe Bruno? A. (Witness nods head in affirmative.)

Q. Had you ever met him before? A. No.”
[R. 174.]

Q. Who was it that was in charge of the house while you were there? A. A girl named Bobby.”
[R. 175.]

* * * * *

“Q. Did you ever pay any money to him? (Referring to Bruno.) A. I never gave him any money directly.

Q. Did he ever give you any money? A. No.

Q. No money transactions between you and Joe Bruno? A. Not directly, no. [R. 177-178.]

Section B.

TESTIMONY OF JOHN GOLDBERG.

[R. 220-230.]

“Q. In the course of your business, did you have occasion to visit a number of houses of prostitution?

A. Yes, sir.

Q. In that connection, did you become familiar with the language used by those engaged in the business of prostitution? A. Yes, I did.

Q. Did you become familiar with the meaning of the term ‘old lady’?

(Objection overruled.)

A. Yes, I was.

Q. What does that mean? A. Well, that means—

Q. (by the Court) Means what? A. It means they are with some fellow.

Q. Some fellow? In what connection are they with some fellow?

(Objection overruled.)

A. Well, the saying there is, an ‘old lady’ that they are with somebody, you know, that they are with some man.

Q. What is the term, if any, applied to that man?

(Objection overruled.)

A. Well, they call it fish.

Q. Do they call him by any other name? A. No, fish.

Q. The man I am talking about. A. Yes, about the man. They call him fish.

Q. (by the Court) They call him what? A. They call him fish.

Q. (by the Court) Fish? A. That is the term I know.

Q. Did they also call them pimps?

(Objection sustained.)

Q. Is that term known to you as being synonymous with any other word than fish? A. Yes, well, it is the same as a pimp or fish. That is what they call them.

Q. In connection with your business, was the term, of your own knowledge, 'old lady,' applied to Kitty in Delano?

(Objection overruled.)

A. She was the landlady.

Q. Was the term 'old lady' also applied to her? A. Well, they usually call—in a business they usually call everybody, 'old lady.'

Q. In the meaning in which you just defined the word, 'old lady,' was that term applied to Kitty?

(Objection overruled.)

A. Well, yes. 'Old lady'—you hear that, yes.

Q. Was she described specifically as the 'old lady' of a particular person?

(Objection overruled.)

A. The only thing I know is from hearsay, hear-say that—

(Objection sustained.)

The Court: Perhaps we could get at this in another way.

Q. (by the Court) Did you ever hear Kitty referred to as anybody's 'old lady,' anybody in particular? A. Well, not from the place there, but I have heard it around, just as you hear, you know, 'old man.'

Q. (by the Court) Did you ask—did you find out who Kitty's 'old man' was? A. I don't know. I don't know . . . That is all I heard was his name.

Q. What name had you heard?

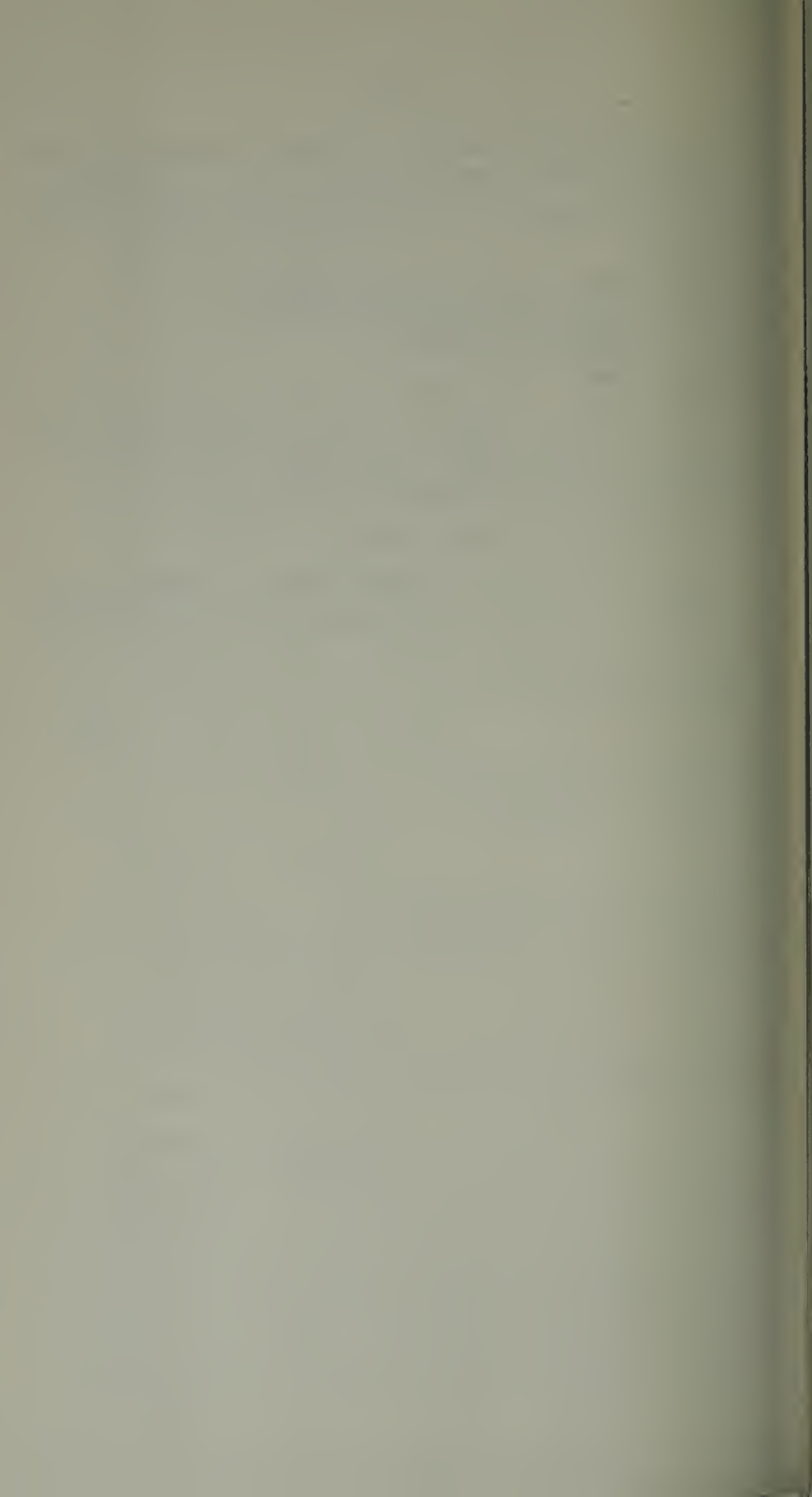
(Objection overruled.)

A. Joe.

Q. (by the Court) Tell us what his name was? A. The only thing I ever heard from hearsay I heard it was Joe Bruno, but that is all I know.

(Motion to strike denied.)

Q. To your knowledge have you ever met Joe Bruno? A. No, I never met him." [R. 221-225.]



Section C

VARIANCE AMONG INDICTMENT, BILL OF PARTICULARS AND PROOF OF OVERT ACTS

<u>Overt Act No.</u>	<u>Date in Indictment, "in":</u>	<u>Date in Bill of Particulars "on or about":</u>	<u>Nature of Event, per Indictment</u>	<u>Location of Event, per Indictment</u>	<u>No Proof Offered</u>	<u>Remarks</u>
1	June, 1953	June 15, 1953	Boyd and Ege went to 2545 Noriega St.	No. Dist. Cal.	No proof offered.	
2	September, 1953	September 15, 1953	Ege took Bell from Sarong Club to 395 Monterey Blvd.	No. Dist. Cal.	No proof offered. Bell went to both Sarong Club and 395 Monterey Blvd. with a friend named Rosalind [R. 61-62, 95].	
3	September, 1953	September 15, 1953	Ege and Bell hold conversation at 395 Monterey Blvd.	No. Dist. Cal.	No proof that this pursuant to a pre-existing conspiracy among any of Defendants. Date of conversation about September 1 [R. 95, 68, 69, 172].	
4	October, 1953	October 13, 1953	Ege drove Bell from Folsom, Cal., to 395 Monterey Blvd.	No. Dist. Cal.	No proof of such an event at any time after before September 15, 1953 [R. 172]. Other evidence indicated Bell in Arizona on October 13 [R. 76, 203, 204-205, 209-210].	
5	October, 1953	October 20, 1953	Ege gave Bell the Arizona telephone number of Boyd	No. Dist. Cal.	Denied by Bell [R. 123, 165, 184].	
6	October, 1953	October 22, 1953	Bell in Arizona had a telephone conversation with Boyd	Arizona	Denied by Bell [R. 164, 184].	
7	October, 1953	October 22, 1953	Boyd drove Bell from Phoenix to Scottsdale	Arizona	Denied by Bell [R. 184-185].	
8	October, 1953	October 25, 1953	Bell in Arizona had telephone conversation with Ege in San Francisco	Arizona and No. Dist. Cal.	No proof that Ege in San Francisco, or in No. Dist. of Calif. at time of conversation or during month of October [R. 76-77, 274-275].	
9	October, 1953	October 27, 1953	Bruno drove Bell from Bakersfield to Delano	So. Dist. Cal.	No proof pursuant to the conspiracy.	
10	October, 1953	November 5, 1953	In San Francisco, Ege took \$700 from Bell	No. Dist. Cal.	No proof offered. Bell testified she gave from \$200 to \$400 to Ege in Fresno [R. 79, 81, 140, 186].	Note variance in months between Indictment and Bill of Particulars
11	October, 1953	November 10, 1953	Ege drove Bell from San Francisco to Yolo County	No. Dist. Cal.	No proof offered.	" " "
12	November, 1953	December 7, 1953	Ege drove Bell from San Francisco to Barstow	No. Dist. Cal. and So. Dist. Cal.	Denied by Bell [R. 187].	" " "
13	November, 1953	December 20, 1953	In Barstow, Ege took \$900 from Bell	So. Dist. Cal.	Ege picked up a hundred dollars or so from Bell in Barstow [R. 155-156], close to Christmas of 1953 [R. 157]. No proof pursuant to conspiracy.	" " "
14	December, 1953	December 22, 1953	Ege drove Bell from Barstow to Las Vegas	So. Dist. Cal. and Nevada	No proof pursuant to conspiracy.	

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT JOSEPH BOYD'S OPENING BRIEF.

LEO R. FRIEDMAN,

935 Russ Building, San Francisco 4, California,

Attorney for Appellant

Joseph Boyd.

FILED

JUN -8 1956

PAUL P. O'BRIEN, CLERK

Subject Index

	Page
Jurisdictional statements	1
Statement of the case presenting the questions involved and the manner in which raised	2
1. The indictment and pre-trial proceedings	2
2. The evidence, objections thereto and rulings thereon..	4
Specification of errors	20
Argument	21
I. The failure of the court to instruct that the jurors must all agree on at least one of the overt acts charged necessitates a reversal of the judgment (Specification of Error No. 5)	21
II. The evidence was insufficient to establish the conspiracy charged in Count Two of the indictment (Specification of Errors Nos. 1, 2, 4)	27
(a) Fundamental principles governing the competency of proof to establish a criminal conspiracy	28
(b) Evidence that must be eliminated and disregarded in determining whether the conspiracy existed and that Boyd was a member thereof	31
(c) There is no competent evidence establishing that Boyd ever became a member of the alleged con- spiracy	34
III. The evidence was insufficient to establish venue in the Northern District of California or to confer jurisdic- tion on the trial court (Specification of Error No. 3)	39
Conclusion	39

Table of Authorities Cited

Cases	Pages
Bollenbach v. United States, 326 U.S. 607, 90 L.Ed. 315..	27
Braverman v. United States, 317 U.S. 49	28
Cramer v. United States, 325 U.S. 1, 89 L.Ed. 1441.....	24, 25
Daeche v. United States, 250 Fed. 566	31
Dahly v. United States (8 Cir.), 50 F. 2d 37	38
Direct Sales Co. v. United States, 319 U.S. 703, 87 L.Ed. 1674	38
Dolan v. United States (9 Cir.), 123 Fed. 52	29
Glasser v. United States, 315 U.S. 60, 86 L.Ed. 680.....	28, 29
Goff v. United States, 257 Fed. 294	31
Haupt v. United States, 330 U.S. 631, 91 L.Ed. 1145.....	25
Kotteakos v. United States, 328 U.S. 750.....	37
Kuhn v. United States (9 Cir.), 26 F. 2d 463.....	31
Lee v. United States (9 Cir.), 106 F. 2d 906	38
Lynch v. Magnavox Co. (9 Cir.), 94 F. 2d 883.....	28
Mangum v. United States, 289 Fed. 213	31
Marino v. United States (9 Cir.), 91 F. 2d 691.....	38
Mayola v. United States (9 Cir.), 71 F. 2d 65.....	31
Minner v. United States (10 Cir.), 57 F. 2d 506	29, 38
Morrison v. California, 291 U.S. 82, 78 L.Ed. 664	38
Nibbelink v. United States (6 Cir.), 66 F. 2d 178	30
Ryan v. United States, 99 Fed. 864	31
Samuel v. United States (9 Cir.), 169 F. 2d 787	24, 26
Terry v. United States (9 Cir.), 7 F. 2d 28	38
Thomas v. United States (10 Cir.), 57 F. 2d 1039	30
Tinsley v. United States (8 Cir.), 4 F. 2d 891	38
United States v. Falcone, 311 U.S. 205, 85 L.Ed. 128.....	28, 38
United States v. Renda (2 Cir.), 56 F. 2d 601	31
Wynkoop v. United States, 22 F. 2d 799	31

TABLE OF AUTHORITIES CITED

iii

	Codes	Pages
18 U.S.C. Section 2421		1, 2
18 U.S.C. Section 3231		1
28 U.S.C. Sections 1291 and 1294		2

No. 14,955

IN THE

**United States Court of Appeals
For the Ninth Circuit**

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT JOSEPH BOYD'S OPENING BRIEF.

Appellant Joseph Boyd having been convicted by a jury of having conspired with the other appellants above named to knowingly transport women between California and Arizona and between California and Nevada for the purpose of prostitution (18 U.S.C. sec. 2421), the court sentenced him to five years imprisonment (R. 50). From such judgment and sentence Joseph Boyd prosecutes this his appeal.

JURISDICTIONAL STATEMENTS.

1. *Jurisdiction of the District Court.* 18 U.S.C. Section 3231 provides that "The district courts of the

United States shall have original jurisdiction * * * of all offenses against the laws of the United States.”

2. *Jurisdiction of this Court upon appeal* is invoked under the provisions of Title 28 U.S.C. Sections 1291 and 1294.

3. *Pleadings necessary to show the existence of the jurisdiction* are the indictment (R. 3) and appellant's plea of not guilty (R. 8).

4. *Facts disclosing the basis upon which it is contended that the District Court had jurisdiction and this Court has jurisdiction to review the judgment in question will be stated more fully in the following abstract of the case.*

STATEMENT OF THE CASE PRESENTING THE QUESTIONS INVOLVED AND THE MANNER IN WHICH RAISED.

1. The indictment and pre-trial proceedings.

The first count of the indictment charged Edward Ege *alone* with violating 18 U.S.C. Section 2421 by transporting a woman in interstate commerce from San Francisco, California, to Scottsdale, Arizona, for the purpose of prostitution (R. 3). Ege was found guilty of this charge (R. 30).

The second count charged appellant together with appellants Ege and Bruno with conspiring, at a time and place unknown to the grand jury, to knowingly transport women between California and Arizona and between California and Nevada for the purpose

of prostitution (R. 3). This charge is followed by 14 overt acts (R. 4) of which 9 thereof are alleged to have been committed within the jurisdiction of the District Court for the Northern District of California, viz.: Overt Acts, 1, 2, 3, 4, 5, 8, 10, 11 and 12.

Joseph Bruno moved for a bill of particulars (R. 11) as to the following matters: (1) the name of the person described as "a woman" in count one, (2) names of the women whom defendants are alleged to have conspired to transport in count two between California and Arizona, (3) names of the women whom defendants are alleged to have conspired to transport between California and Nevada, (4) date and circumstance of each alleged act of transportation between California and Arizona, and California and Nevada, (5) the day of the month upon which each of the overt acts are alleged to have taken place, and (6) the day in October, 1953 when Bruno allegedly drove Constance Marie Bell from Bakersfield, California, to Delano, California.

In response to the foregoing motion the United States attorney furnished each of the defendants with a bill of particulars (R. 15) specifying as follows:

As to count one that "the woman" was Constance Marie Bell and was one of the women referred to in count two and the overt acts thereunder.

As to count two that Constance Marie Bell was one of the women whom defendants conspired to transport between California and Arizona and California and Nevada. That the approximate date on which each overt act took place was as follows:

- (1) On or about June 15, 1953.
- (2) On or about September 15, 1953.
- (3) On or about September 15, 1953.
- (4) On or about October 13, 1953.
- (5) On or about October 20, 1953.
- (6) On or about October 22, 1953.
- (7) On or about October 22, 1953.
- (8) On or about October 25, 1953.
- (9) On or about October 27, 1953.
- (10) On or about November 5, 1953.
- (11) On or about November 10, 1953.
- (12) On or about December 7, 1953.
- (13) On or about December 20, 1953.
- (14) On or about December 22, 1953.

Appellant Boyd moved the court for an order for a separate trial on count two of the indictment (R. 21). His codefendant made a similar motion (R. 22). The court denied each such motion (R. 25).

2. The evidence, objections thereto and rulings thereon.¹

Constance Marie Bell testified in substance as follows:

I was born in 1934 (R. 58). While I was working at the Burlesque Follies in San Francisco, I met the defendant Ege at the Sarong Club on Geary Street

¹The court stated he was going to allow all matters in evidence against all defendants. That at the proper time counsel could make motions relative thereto. (R. 62.)

(R. 61). I went to Ege's house on Monterey Boulevard where we talked about "the racket" (R. 62). By "racket" I mean prostitution.² There was a discussion about prostitution; I didn't know anything about it and Ege told me how much you got for it and different places you work; how the money was split and about bringing home the money to him (R. 66). He told me how the business was run; how the houses would take one half and I get the other half; about the life and the "racket"; about nice places and new clothes and different things. I stayed at Ege's about a week. After a week I went to this place in Folsom that Ege opened up; I went to work there; prostitution went on in this place in Folsom. I stayed there about a week and engaged in acts of prostitution and I gave Ege the money I earned (R. 69). This was in the latter part of September, 1953 (R. 70); then Ege came and took me back to Monterey Boulevard in his Cadillac car where I stayed for a while while they hunted for a job for me (R. 70). Ege finally said he had found a job for me in Phoenix. This other girl was going down and Ege said we could go down together and share the expenses. I knew this other girl as Judy Berg. Judy Berg and I went to Phoenix together (R. 71). Ege gave me \$50 as my share of the expenses. We went to Phoenix in Judy's car. On the way we stopped in Delano about one half hour.

²Attorney for Boyd objected that the *corpus delicti* had not been laid as to the conspiracy and objected to all conversations the witness Bell had with Ege as having no bearing and being incompetent, irrelevant and immaterial. (R. 63.) The court overruled the objection and said at a later date that he would sift the "weed from the chaff". (R. 64.)

We arrived in Phoenix before noon (R. 72). Ege told Judy that when we arrived in Phoenix she was to phone Joe Boyd at a motel or someplace and he wasn't there. I don't know how she did get in touch with him. It was either through the maid or Eddie left a message at the motel for her or called some other number, but I don't know how it was. We went to this maid's house in Phoenix (R. 73); when we arrived at this maid's place, we made some phone calls. Judy made one and I made one. I don't know who Judy called. The maid and her husband drove us to Scottsdale. At Scottsdale there was a girl called Ginger running the place; she was supposed to be with Joe Boyd. I saw Boyd there on the following days. After the first day, I started working as a prostitute (R. 75); I got a message that Ege was going to call me at this phone booth at a gas station which was not far from the house. Ege did call me.³ Ege asked how the business had been and I said it was bad and he said Delano was open and so I went to Delano. The defendant Ege suggested that I go to Delano and said I was to fly there because they were short of girls. I earned a couple of hundred dollars at Scottsdale; 50% went to the house and 50%—about \$200 went to me (R. 77), out of which I paid 10% for room and board. Over the telephone Ege told me that when I got to Los Angeles, I was to phone a number in Delano that he gave me and I was to let him know what time my flight would arrive in

³The court stated that it was understood that the objections as to hearsay testimony was to continue. (R. 76.)

Bakersfield. Ege told me I was to call Joe Bruno. When I arrived in Bakersfield, Joe Bruno was there to pick me up. He was driving a Cadillac. He took me to Delano at his house (R. 78). There Bruno told me that the house was his and his old lady's; a girl named Kitty. I did not meet Kitty in Delano. I worked at this place in Delano for about three weeks and earned about seven or eight hundred dollars as my share (R. 79). Bruno was there almost every night; he would sit in the kitchen every night until it was time to check out, then he would help count the money. From Delano I went to Fresno where Ege came and picked me up and we went back to San Francisco to Monterey Boulevard where I stayed a few weeks and during which time I went to Sacramento and Isleton. Both places were houses of prostitution. The money I got in Delano, Ege took away from me in Fresno. I am not sure whether I gave Ege the money I earned in Isleton (R. 81). Ege told me that all the girls gave their money to the man that they were with (R. 82). I quarreled with Ege over the money and I wanted to go away and be on my own, but Ege said it just wasn't done. He pushed me around and one time he chased me with a knife. He told me that if I was ever arrested for working in a house, I wasn't to say anything (R. 83). Then I went to Barstow (R. 84). Ege told me about this job in Barstow and for me to get ready and go. It was a little place outside of Barstow called Newberry where I stayed a couple of weeks. When the place got raided (R. 85), I went to jail and then got out on bail (R. 86).

I phoned to somebody in Las Vegas and they told me to wait at Barstow and Ege would come and get me, which he did, in his Cadillac, and then we went to Las Vegas (R. 87). After a few days, I quarreled with Ege and came back to San Francisco on the bus (R. 88). It was around Christmas in 1953 that we left Las Vegas. From Christmas, 1953, I broke off with Ege as far as any financial transactions with him were concerned (R. 91).

(Cross-Examination.)⁴ In September of 1953, I was introduced to Edward Ege at the Sarong Club in San Francisco, by a girl named Rosalind, who was working with me in the Follies (R. 94); I had never met him before; Rosalind accompanied me to 395 Monterey Boulevard; Rosalind stayed there one night (R. 95-6); the first day I was there, Ege talked to me about prostitution (R. 97). Ege told me he was the interceptor for all these girls—their money; he said he had three or four girls—Ginger was married to him (R. 98-9); I was introduced to Ege as Cindy (R. 99); I went into prostitution because I wanted the money (R. 102); during the first week at Monterey Boulevard, neither Boyd nor Bruno came there (R. 102); Judy Berg and I went alone from San Francisco to Phoenix (R. 103); Ege first mentioned Phoenix a week or two after I left Folsom (R. 103); I saw Ege while in Folsom and told him I was scared and didn't know what I was doing (R. 105); Ege

⁴The cross-examination by the various counsel for defendants covers 107 pages. We omit portions which are mere repetitions of the witness's direct examination.

drove me from Folsom back to Sacramento (R. 107); it took about a week for Ege to find work for me after I came back from Folsom (R. 111).

At the Sarong Club, I heard Judy tell Ege that she was going to Phoenix (R. 114); Ege told me, "Here is \$50 as my share of the expense to Phoenix" (R. 116); I told Ege I was getting ready to go and that Judy and I were going to share the expense, and he gave me the money (R. 117-118).

Just Judy and I made the trip to Phoenix (R. 123); before leaving for Phoenix, Ege told me to go to Joe Boyd's place in Phoenix (R. 123); he did not give me any address—he just said, "Joe Boyd, Phoenix, Arizona" (R. 125). I didn't know exactly where Joe Boyd's was, except it was on the outskirts of Phoenix and Scottsdale (R. 126); Scottsdale is not very far from Phoenix (R. 127); Judy had the number to call Joe Boyd and she did (R. 127); Boyd had left a message to call somewhere else; then we went to the maid's house and she and her husband drove us to Scottsdale (R. 128); later that day, I saw Joe Boyd (R. 128).

Ege did not give me the telephone number of Boyd's place in Scottsdale and I can't say he gave it to Judy Berg (R. 164); I never had any telephone conversation with Mr. Boyd in Arizona (R. 164); I had never seen Joe Boyd until after the colored maid and her husband drove me to the place in Scottsdale (R. 165); I never made a phone call to Joe Boyd (R. 166).

I know I was in Phoenix sometime in October (R. 170).

When Judy and I arrived in Phoenix, Judy phoned some number as a result of which we got in touch with this maid and her husband (R. 183); I did not testify before the grand jury that I had done the telephoning to Mr. Boyd (R. 183).

As to the language in the indictment "that at 395 Monterey Boulevard in the City and County of San Francisco, the defendant, Edward Raymond Ege, gave the telephone number in Arizona of defendant, Joseph Boyd to Constance Marie Bell", Ege did not give that telephone number to me (R. 184).

As to overt act seven that "The defendant Joseph Boyd drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona", in fact I was driven there by the husband of the colored maid and not by Mr. Boyd (R. 185).

I was not present at the time Ege telephoned to Scottsdale, Arizona, and talked to Joe Boyd (R. 271), I only know what somebody else reported to me (R. 271).

I never talked to Ege over the phone from Arizona (R. 275).

I did not make a phone call to Joe Boyd (R. 275) and if I so testified it was an error (R. 275).

Gene Giomi testified in substance as follows:

In the spring of 1952 I owned the premises at 395 Monterey Boulevard, San Francisco; at that time I rented the premises to Mr. and Mrs. Boyd (R. 195), from April 15, 1952 to May 15, 1953; at that time Boyd introduced Mr. Ege and told me he was going

to leave the State, and that Mr. and Mrs. Ege would carry on his obligations, so Ege occupied the premises from May 15, 1953 to January 29, 1954 (R. 196).

(Cross-Examination). The four checks you show were used by Ege to pay the monthly rent; the four checks (Defs' Ex. A) are dated September 22, 1953; October 29, 1953; November 20, 1953, and December 29, 1953 (R. 198); the checks could have been mailed in to me or handed to me personally (R. 200).

George W. Rathsen testified in substance as follows:

I am assistant manager at the El Rancho Hotel, Phoenix, Arizona, and was such in September, 1953; on September 20, 1953, I registered Mr. and Mrs. Boyd in the hotel; they checked out on October 21 (R. 204).

(Witness here identified Gov. Ex. 1 as the registration cards of the hotel showing the room occupied by the Boyds and long distance telephone calls made (R. 206).)

The majority of long distance calls made by Mr. and Mrs. Boyd were made to San Francisco (R. 207).

I do not know the number or to whom the long distance calls were made (R. 208).

S. W. Ellingson testified in substance as follows:

My post office address is Peoria, Arizona. In October, 1953, I owned a house three miles north of Scottsdale; on October 6, 1953, I rented the place to J. B. Boyd (R. 201-2) for one year with first and last months' rent payable in advance and was paid such advance rentals of \$300 on October 6 by Mr. Boyd

(R. 202); Boyd introduced me to his wife and told me he had been in the jewelry business in San Francisco and was looking to establish a jewelry business in Scottsdale (R. 203); Boyd moved out of the house about October 20 (R. 203).

Charles W. Briley testified in substance as follows:

I operate the Pink Pony bar and restaurant in Scottsdale, Arizona. In the first week of October, 1953 I had a conversation in the Pink Pony bar with Boyd whose wife was present (R. 209); I saw Boyd every day or other day after that over a period of two weeks; on my second meeting with Boyd he said he was interested in acquiring a residence in Scottsdale to operate a house of prostitution (R. 210-11); he said if I could send him any business he would appreciate it; I don't think I ever saw Boyd accompanied by anyone other than his wife who was introduced to me as Ginger (R. 211); when they first opened up the place he told me they had one girl, besides his wife who was running the place; he said there were two more girls supposed to show up from California (R. 212).

(Cross-Examination). I was never introduced to Boyd's wife as Ginger, I was introduced to her as Izzy (R. 213).

I recognized the witness Constance Marie Bell when she was on the stand in this case (R. 266); I had seen her and Judy Berg in the house in Scottsdale; I was in the Scottsdale house three or four times a week; I couldn't say how many times I saw Constance Marie Bell in the house; the house was opened

for about two weeks and Constance Bell was not there all that time (R. 267).

George H. Thomas, Jr. testified in substance as follows:

In October, 1953, I was a constable and deputy sheriff for the Precinct of Scottsdale at which time I met Joseph Boyd at Mr. Ellingson's home (R. 215); I talked to Boyd on more than one occasion; we probably discussed the fact that he was operating a house of prostitution there (R. 216); around the middle of October, Boyd told me they were leaving and I said that was a good idea (R. 217). I had occasion, between the time I first met Boyd and when he told me he was leaving, to visit the Ellingson house; on those visits I saw Mrs. Boyd, one time I saw a black-headed woman and another time I saw two blonde-headed ladies (R. 217).

Kenneth Ward Wright testified in substance as follows:

In December, 1953 I was a deputy sheriff of San Bernardino County (California). On December 21, 1953 I raided a house of prostitution, being the motels belonging to Tony's Spaghetti House, four miles east of Newberry, California, where three arrests were made (R. 219); I arrested one blonde, one red-head and one brunette girl; the blonde was booked under the name of Cindy Martin (R. 220).

John C. Moe testified in substance as follows:

As a special agent of the F.B.I., I interviewed Joseph Boyd in San Diego on January 12, 1955 (R. 231); Boyd said he was a gambler by occupation; he

first stated he could not recall where he was in the fall of 1953, he later stated during September, 1953 he was in Scottsdale, Arizona, where he stayed at the Palms Hotel (R. 233); he afterwards changed that to the El Rancho Motel where he stayed for 25 days; he stated that he planned to set up gambling and contacted the local constable who gave him the green light for poker and dice; that no payoffs were made to the constable; that another purpose of going to Scottsdale was to remarry his wife, whom he had married in Tia Juana, Mexico, in 1951, and that every year thereafter they remarried (R. 234); that his wife's name was Isadora McCormick and had also been known as Izzy, that she had never been known as Ginger (R. 234).

Boyd further stated that he rented the premises in Scottsdale from J. Walter Ellington; that he made no money gambling in Scottsdale (R. 235).

He stated he first met Ege in the Sarong Club, San Francisco, about two years previously when Ege was going to buy an interest in the Sarong Club; that his only contacts with Ege was when Ege took over Boyd's house in San Francisco; that he knew nothing of the activities on Monterey Street (sic) after he, Boyd left there; denied knowing anything about Ege's activities or associates (R. 236).

Boyd stated he was remotely acquainted with Joe Bruno; that he heard rumors that Bruno operated a house of prostitution, but thought Bruno too smart to be so involved; that he had played cards with Bruno on some occasions (R. 237); on showing him

photos of Miss Bell and Mildred Berg, he denied knowing either one (R. 237).

Ray M. Andress testified in substance as follows:

I am a special agent of the F.B.I. (R. 240); I first talked to Joseph Boyd at San Francisco on June 21, 1955, and the second talk on June 23, 1955 and again on September 6, 1955 (R. 241).

On June 21 I had a warrant for Boyd's arrest and explained to him he was arrested for violation of the White Slave Traffic Act and for conspiracy, he stated that if taking telephone calls from Edward Ege was conspiracy, then he had committed conspiracy; he admitted he had operated a house of prostitution at Scottsdale, Arizona, and that Constance Marie Bell and Marian Louise Berg had worked there for him as prostitutes (R. 243); that he went to Scottsdale the first part of October, 1953, and was there about three weeks (R. 243).

Boyd said there had been several telephone conversations with Ege while Ege was in San Francisco and he was in Scottsdale (R. 244).

On June 23, Boyd told me that he had been operating in that fashion in the last few years around the country that he had the house in Scottsdale; that he knew when Mrs. Bell left Scottsdale she came to Delano, California, but that arrangement was made by Ege and he, Boyd, had nothing to do with it; that Bruno had been operating a house around Delano for several years (R. 245-6).

On September 6, Boyd told me that Ege wanted him to say he did not have any telephone conversation

with Ege from Arizona and that he told Ege he couldn't do that because there had been a number of conversations (R. 247).

The government having rested its case, each defendant made a motion for judgment of acquittal and also motions to strike out testimony (R. 280).⁵

The court reserved rulings on the motions for acquittal until the conclusion of the case (R. 280); with regard to the various motions to strike the court stated (280):

"With regard to the various motions to strike which have been made, obviously in my instructions I am going to tell this jury what conversations and what acts are binding upon each defendant to the exclusion of others, so that I will try to the best of my ability to make it abundantly clear to the jury that certain conversations, for example, Boyd may have had with a variety of people, are not binding upon the other two defendants; that certain activities of Bruno are not binding upon the other defendants; that certain activities of Ege are not binding upon the other defendants.

⁵The record does not show the grounds of the motions but the present writer is informed the motions to strike by Boyd were made to the testimony of Constance Marie Bell relating all conversations and transactions between Constance Bell and Ege, and Judy Berg out of the presence of Boyd as hearsay, and that such conversations were inadmissible to prove the conspiracy as the *corpus delicti* had not been established by independent testimony; that the motion for judgment of acquittal was made on the ground of the insufficiency of the evidence. *If there is any question raised as to this, appellant asks that court make an order augmenting the record by including therein said motions to strike and said motions for acquittal.*

In other words, I have chosen that method of procedure rather than have the cumbersome and awkward situation of having each lawyer stand up and object and causing the Court to rule: 'Now, ladies and gentlemen of the jury, you will understand that this testimony is only being received (as for example), as against the defendant Bruno.' The result after a trial of the character of this is hopeless confusion in the minds of the jury.

I shall attempt to clarify that in my instructions, so that you may generally be apprised at this time that your motions to strike, insofar as I consider them apt and pertinent, will be granted, in certain respects. Obviously, I can't tell you that now because I haven't had a chance to review this transcript. However, I will cover that in a general way."

Thereupon Joseph Boyd rested his case (R. 281), as did the defendant Bruno (R. 282). Attorney for Boyd then stated that he understood that the defendant Ege was not going to rest and asked the court to instruct the jury that any evidence produced by Ege be limited to Ege alone (R. 282). The court stated it did not think it an appropriate time to get (sic) such an instruction.

Edward Raymond Ege testified in his own behalf in substance as follows:

I know Constance Marie Bell, I met her for the first time in 1953 at 395 Monterey Boulevard in San Francisco, where she was brought by a girl named Rosalind and introduced to me as "Cindy"; later I

knew her as Cindy Martin (R. 285); a few days later she came to 395 Monterey Boulevard; she said she had been living in town where some man was paying her keep and she wanted to get away, so I said, "Why don't you stay out here?" and she did (R. 286).

I own that property in Folsom since 1949 it is an old 11-room house. In October and September, 1953 it was not in use, then I let Barbara Reynolds take it (R. 286) I received no rent for it I went there to do some repair work and fix up the place; Frank Alvarez owns the property with me (R. 287).

I knew Joseph Boyd very vaguely, I met him a few times and took over his lease where he was living at 395 Monterey Boulevard I first met him in the Sarong Club (R. 288).

I have never known or saw Joseph Bruno until I saw him in this courtroom and never talked to him.

I believe that Constance Bell was in Folsom about one week and have heard that Judy took her there (R. 289).

After Folsom, Constance Bell, who I knew as Cindy Martin, returned to 395 Monterey and stayed there a day or so (R. 289); when she left my house I had no knowledge of where she and Judy went; I first learned from Constance Bell in Fresno that she and Judy had gone to Scottsdale, Arizona (R. 290).

(The witness categorically denied the allegations set forth in Overt Acts 1, 2, 3, 4, 5, 8, 10, 11, 12, 13 and 14 [R. 290-297].)

I never provided any place for Constance Marie Bell to ply her trade as a prostitute (R. 297); I never knew Joe Boyd was in Arizona (R. 294); I have never conspired with Joseph Boyd at any time for the purpose of moving Constance Marie Bell or any other girl from one State to another for purposes of prostitution (R. 292).

(Cross-Examination). My wife has been known as Ginger (R. 299); while I was working in the Sarong Club, Joe Boyd came in a couple of times and he asked me if I needed a place to live and that he had a place he was going to vacate and I said no; later I called his house to make an appointment and talked to the owner, Mr. Giomi, who said it was all right if I took over the lease (R. 308); I stayed there until the lease terminated in 1954. My wife stayed there, Constance Bell did for a short time and Judy stayed there some time (R. 309).

I don't believe after we saw Mr. Giomi that I saw Joe Boyd again; I never talked to Boyd from the time I took over the lease until July 9, 1955 (R. 313); when I met him at the bail bond office, I told him I was not guilty (R. 314); I never told Boyd that I would appreciate it if he would say nothing about the telephone conversations that he and I had when he was in Scottsdale (R. 315).

Constance Bell had a boy friend in San Rafael and sometimes I drove her there as a favor (R. 316) in my Cadillac.

I never knew Constance Bell used the name of Martin (R. 320).

On December 21, 1953, I was in Las Vegas, Nevada, where I came from San Francisco (R. 321); I drove in a Cadillac, I stayed in Las Vegas until the night of the 24th, and spent Christmas in San Francisco, I flew from Las Vegas to San Francisco (R. 322).

I made a trip to Fresno the latter part of 1953; on one occasion, Constance Bell called me and asked if I could come down and drive her back to San Francisco, which I did (R. 329).

After the court instructed the jury, a verdict was returned finding this appellant guilty on count two of the indictment (R. 30).

A motion for a new trial (R. 33) was made and denied (R. 37). The court sentenced appellant to imprisonment for five years (R. 38).

SPECIFICATION OF ERRORS.

1. *The court erred in denying appellant's motion for a judgment of acquittal.*

At the conclusion of the government's case appellant Boyd made a motion for a judgment of acquittal (R. 280) which motion was denied by the court (R. 30).

2. *The evidence was insufficient to support the verdict of guilty.*

3. *The evidence was insufficient to establish venue in the Northern District of California or to confer jurisdiction on the trial court.*

4. *The evidence was insufficient to establish the conspiracy charged in count two of the indictment.*

5. *The court erred in not instructing the jurors they must all agree on at least one of the overt acts.*

The court instructed the jury that to establish the charge of conspiracy the government must prove at least one of the overt acts set forth in the indictment (R. 342, 344, 347). The court failed to instruct that the jurors must all concur on at least one of the overt acts before a verdict of guilty could be found.

Mr. Stout (attorney for Ege) objected and excepted to the court's charge as failing to instruct as follows: "Unanimity of the jury as to the overt act proved by the government" (R. 357). The court denied the objection (R. 358).

ARGUMENT.

I. **THE FAILURE OF THE COURT TO INSTRUCT THAT THE JURORS MUST ALL AGREE ON AT LEAST ONE OF THE OVERT ACTS CHARGED NECESSITATES A REVERSAL OF THE JUDGMENT.** (Specification of Error No. 5.)

The second count of the indictment sets forth 14 overt acts. As hereafter argued several of these overt acts were not established by the evidence.

The court instructed the jury as to overt acts as follows:

“Accordingly, if you find beyond a reasonable doubt that the defendants conspired together to transport women, including Constance Marie Bell, in interstate commerce for the purpose of prostitution, and that any one of the overt acts charged was done in furtherance of the conspiracy, it is your duty to convict. The overt acts charged to have been done in furtherance of the conspiracy, as supplemented by a Bill of Particulars are as follows: (here the court reads to the jury at length the fourteen alleged overt acts).” (R. 340-342).

On page 344 the court defines an overt act and tells the jury that it is not necessary that all the overt acts be established, but that “at least one of these be proved and that it be in furtherance of the object of the conspiracy.”

On page 347 the court defines the various elements of the crime of criminal conspiracy and as to overt acts charged: “Fourth, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment. Fifth, that such overt act was committed in furtherance of an object or purpose of the conspiracy.”

Nowhere did the court instruct the jurors that they must all agree on at least one of the overt acts charged.

Without going through all of the 14 overt acts, we point out some that were not supported by the evidence.

Overt Act 5 alleges that on or about October 20, 1953, defendant Ege gave Constance Marie Bell the telephone number of Joseph Boyd in Arizona. Constance Bell testified that Ege told Judy that when they arrived in Phoenix she was to phone Joe Boyd at a motel or someplace (R. 73); that Ege did not give me the telephone number of Boyd's place in Scottsdale and I can't say he gave it to Judy Berg (R. 164); I never made a phone call to Joe Boyd (R. 166); as to the allegation in the indictment that Ege gave me the telephone number in Arizona of Joseph Boyd, Ege did not give that telephone number to me (R. 184).

Overt Act 6 alleges that on or about October 22, 1953, Constance Marie Bell, in Arizona, had a telephone conversation with Joseph Boyd. Constance Marie Bell denied this and testified as follows: "I never made a telephone call to Joe Boyd (R. 166). There is no evidence in the record of any phone conversation in Arizona between Constance Bell and Joe Boyd.

Overt Act 7 alleges that on or about October 22, 1953, Joseph Boyd drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona. Constance Bell testified that from Phoenix to Scottsdale she was driven by the colored maid and her husband (R. 75); that she never saw Joe Boyd until after the colored maid and her husband drove her to the place in Scottsdale (R. 165).

The verdict returned against appellant was a general verdict of guilty. No special verdicts or findings

of the jury were returned as to the individual overt acts. Appellant Boyd moved the court for special findings and special verdicts on the overt acts (R. 359) which motion the court denied (R. 359).

Thus, the jury were allowed to consider all the 14 overt acts even though some were not supported by the evidence.

As the jury returned a general verdict there is no way of knowing (a) what overt acts the jurors agreed upon or (b) whether they found an overt act, not supported by the evidence, to have been done in furtherance of the conspiracy, or (c) whether some jurors found one overt act to have been committed and other jurors found some other overt act to have been committed.

Under well established principles of law a general verdict such as was returned in this case must be reversed where the court fails to instruct that all jurors must agree on at least one of the overt acts, where there are many overt acts and no special verdict or finding is made as to which act or acts the jury found to have been committed.

“In a criminal case the court must instruct on all essential questions of law involved, whether or not it is requested to do so. (citing cases)”

Samuel v. United States, (9 Cir.) 169 F. 2d 787.

In *Cramer v. United States*, 325 U.S. 1, 89 L.Ed. 1441, Cramer was indicted for treason and the indictment set forth 10 overt acts, 7 of which were withdrawn from the jury. A general verdict of guilty

was returned. The Supreme Court reversed because two of the three overt acts were not established by the evidence. In footnote 45 to the decision (325 U.S. 36) the court states:

“The verdict in this case was a general one of guilty, without special findings as to the acts on which it rests. Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient. (citing cases).”

In *Haupt v. United States*, 330 U.S. 631, 91 L.Ed. 1145, the Supreme Court, in its footnote 1 to the case, explains the holding in the *Cramer* case as follows:

“When speaking of a general verdict of guilty in *Cramer v. United States*, 325 U.S. 1, 36, n.45, we said ‘Since it is not possible to identify the grounds on which Cramer was convicted, the verdict must be set aside if any of the separable acts submitted was insufficient’, of course we did not hold that one overt act properly proved and submitted would not sustain a conviction if the proof of other overt acts was insufficient. One such act may prove treason, and on review the conviction would be sustained, provided the record makes clear that the jury convicted on that overt act. But where several acts are pleaded in a single count and submitted to the jury, under instructions which allow a verdict of guilty on any one or more of such acts, a reviewing court has no way of knowing that any wrongly submitted act was not the one convicted upon. If acts were pleaded in separate counts or a special verdict were required as to each overt act of a single count, the conviction would be sustained on a

single well-proved act. As the acts were here pleaded in a single count, and the jury were instructed that they could convict on any one, we would have to reverse if any act were insufficient or insufficiently proved. Cf. *Stromberg v. California*, 283 U.S. 359, 368; *Williams v. North Carolina*, 317 U.S. 287, 292; *Cramer v. United States*, *supra*."

We are conversant with the cases which hold that it is not necessary that all the overt acts be established by the proof. We also know the cases holding that if the evidence established any one or more of many alleged overt acts the verdict will be sustained; *but in each such case the court instructed the jury that the jurors must all agree on at least one of the overt acts charged*.

In the absence of such an instruction, one or two of the jurors may have found that overt acts 1, 3 and 5 were committed, others may have found that overt acts 2, 7 and 10 were committed, while others may have found that different acts were committed. Thus no 12 jurors would have agreed that any one overt act was committed in furtherance of the alleged conspiracy. Neither this court nor any one else can determine which overt act or acts any particular juror or set of jurors based the guilty verdict upon (Cf. *Samuel v. United States*, *supra*).

Under the foregoing circumstances the verdict is void and the failure of the court to instruct the jury on so vital a matter constitutes prejudicial and reversible error.

In *Bollenbach v. United States*, 326 U.S. 607, 90 L.Ed. 315, our Supreme Court states:

“Discharge of the jury’s responsibility for drawing appropriate conclusions from the testimony depended on discharge of the judge’s responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria.”

and later states:

“A conviction ought not to rest on an equivocal direction to the jury on a basic issue.”

If an equivocal instruction on a basic issue requires a reversal of the judgment, then a total failure to instruct on such issue must likewise call for a reversal of the judgment. It was a basic proposition that the jurors all had to agree on the commission of at least one of the 14 overt acts, failure of the judge to so instruct resulted in no relevant legal criteria being furnished for the jury’s guidance.

II. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THE CONSPIRACY CHARGED IN COUNT TWO OF THE INDICTMENT. (Specification of Errors Nos. 1, 2, 4.)

First, we emphasize the fact that this brief deals solely with the guilt or innocence of the appellant Joseph Boyd. We leave to the arguments of their counsel the question of the guilt or innocence of Ege and Bruno.

The question here presented is whether the evidence under the law as announced in the decisions of our courts, was competent and sufficient to establish the

charge that Boyd conspired with either Ege, Bruno or anyone else to transport Constance Marie Bell or any woman in interstate commerce for the purposes of prostitution.

We submit that, under the law, the evidence was wholly insufficient to establish such charge.

(a) Fundamental principles governing the competency of proof to establish a criminal conspiracy.

The gravamen—*corpus delicti*—of the offense of criminal conspiracy is the agreement between two or more parties to do the prohibited act. (*United States v. Falcone*, 311 U.S. 205, 210; *Braverman v. United States*, 317 U.S. 49; *Lynch v. Magnavox Co.*, (9 Cir.) 94 F. 2d 883, 888).

The *corpus delicti*—the conspiring agreement—and the accused's connection therewith *cannot be established* by testimony as to acts and declarations of an alleged co-conspirator said or done in the absence of the accused. There must be independent proof of the conspiracy and the accused's connection therewith before such acts and declarations of an alleged co-conspirator can be considered as evidence against the accused.

In *Glasser v. United States*, 315 U.S. 60, 86 L.Ed. 680, four persons were indicted for conspiracy to defraud the United States. During the trial witnesses testified to statements made by the defendant Kretske during the course of the alleged conspiracy that implicated Glasser. Glasser claimed that such testimony

could not be considered as evidence against him in determining whether a conspiracy existed and that he was a party thereto. The Supreme Court upheld this contention and reversed the case as to Glasser stating, at page 74 of the reported case, as follows:

“Glasser contends that such statements constituted inadmissible hearsay as to him * * *. The Government attacks this argument as unsound, and, relying on the doctrine that the declarations of one conspirator in furtherance of the object of the conspiracy made to a third party are admissible against his co-conspirators. *Logan v. United States*, 144 US 263, 36 L.ed. 429, 12 S Ct 617, contends that the declarations of Kretske were admissible against Glasser and hence no prejudice could arise from Stewart’s failure to object. However, *such declarations are admissible over the objections of an alleged co-conspirator, who was not present when they were made, only if there is proof aliunde that he is connected with the conspiracy.* * * * *Otherwise hearsay would lift itself by its own boot straps to the level of competent evidence.*” (*Italics supplied*).

In *Minner v. United States*, (10 Cir.) 57 F. 2d 506, 511, (cited with approval in the *Glasser* case) the rule is thus stated:

“The existence of the conspiracy cannot be established against an alleged conspirator by evidence of the acts and declarations of his alleged co-conspirators done or made in his absence.”

In *Dolan v. United States*, (9 Cir.) 123 Fed. 52, 54, this court states the following rule:

“The rule is, of course, well settled that where the existence of a conspiracy is affirmatively shown the defendant would be bound by the acts and declarations of his co-conspirators, *but the conspiracy must be shown before a defendant can be bound by any declarations not made in his presence.*” (*Italics added.*)

In *Thomas v. United States*, (10 Cir.) 57 F. 2d 1039, 1042, the court announces the foregoing rule and then states:

“Therefore the statements made and acts done by Gorges in the absence of appellants should not be considered in determining whether the evidence established the connection of appellants with such conspiracy.”

In *Nibbelink v. United States*, (6 Cir.) 66 F. 2d 178, it is held:

“Before the declarations of co-conspirators can be received in evidence against one charged with participating in the conspiracy, it must be shown by independent evidence that the conspiracy existed and that the accused was a party to it at the time the declaration was made.”

It is a further rule of the law of conspiracy that declarations of an alleged co-conspirator that a third person is a member of the conspiracy, are incompetent to establish such third person's connection with the conspiracy.

“But, giving to the rules of evidence in conspiracy cases the widest reasonable latitude, we

are aware of no principle under which the declaration of one conspirator to another is competent to establish the connection of a third person with the conspiracy.”

Kuhn v. United States, (9 Cir.) 26 F. 2d 463;
Mayola v. United States, (9 Cir.) 71 F. 2d 65,
 67;

United States v. Renda, (2 Cir.) 56 F. 2d 601.

Lastly, is the rule that the *corpus delicti* cannot be established by the extra-judicial statements, admissions or confessions of the accused. (*Ryan v. United States*, 99 Fed. 864; *Goff v. United States*, 257 Fed. 294.) Such extra-judicial statements of a defendant are inadmissible in the absence of independent proof of the *corpus delicti* (*Wynkoop v. United States*, 22 F. 2d 799; *Mangum v. United States*, 289 Fed. 213; *Daeche v. United States*, 250 Fed. 566).

Applying the foregoing rules to the record herein, we will now point out (i) the evidence that cannot be considered in determining whether the conspiracy existed and whether Boyd was a member thereof, and (ii) the insufficiency of the remaining evidence.

(b) Evidence that must be eliminated and disregarded in determining whether the conspiracy existed and that Boyd was a member thereof.

The main witness relied on by the government to establish the conspiracy charged and Boyd's connection therewith was the woman Constance Marie Bell.

Applying the rule that statements and acts of an alleged co-conspirator, made out of the presence of

Boyd, cannot be used and are not evidence against Boyd, unless and until there be proof aliunde of the conspiracy and Boyd's connection therewith, *there must be disregarded each of the following matters testified to by Constance Marie Bell:*

(a) That after Constance Bell first met Ege, Ege explained to her how the prostitution racket operated, how the money was split and that she should bring the money earned to him (R. 66); that she worked as prostitute in Folsom and gave the money to Ege (R. 69).

(b) That Ege told her he had found a job for her (prostitution) in Phoenix, Arizona; that Ege told her she and Judy Berg could go to Phoenix together, share the expense and that Ege gave her \$50 toward the travelling expense (R. 71-2).

(c) That Ege told Judy Berg that when they arrived in Phoenix she was to phone Joe Boyd (R. 73).

(d) That she got a message that Ege was going to call her at a gas station; that Ege asked her how business was and she said it was bad, whereupon Ege told her that Delano was open and suggested that she go there (R. 77).

(e) That Ege told her when she arrived, by plane, in Los Angeles to phone Joe Bruno to meet her in Bakersfield, that Bruno met her and drove her to Delano; that Bruno told her the house in Delano was his and his old lady's; that Bruno was there almost every night and would help count the money (R. 78, 79, 81).

(f) The taking of the witness' money by Ege; that Ege told her all the girls gave their money to the man they were with (R. 81).

(g) That Ege told her about a job in Barstow and for her to get ready to go there (R. 85).

(h) That she phoned somebody in Las Vegas who told her that Ege would call for her; that Ege called for her and drove her to Las Vegas (R. 87).

Here it should be noted, that all the moving around by Constance Bell after she left Scottsdale and all her dealings thereafter with Ege and Bruno, undoubtedly were done after Joseph Boyd had anything to do with her, Ege or Bruno. In fact the record establishes that after Constance Bell left Scottsdale she had no further dealings with Boyd, and that Boyd and Ege had no contact one with the other, or that Boyd and Bruno ever had any contacts thereafter or any contacts relative to the alleged conspiracy.

Under the rule that the *corpus delicti* cannot be established by the extra-judicial statements of Boyd, *the following testimony must be eliminated and disregarded in determining whether the conspiracy existed and Boyd was a member thereof.*

(a) Testimony of Charles W. Briley, the operator of the Pink Pony Bar in Scottsdale, that Boyd told him he was interested in operating a house of prostitution in Scottsdale (R. 210); that when Boyd opened up the place Boyd said he had one girl but that two more girls were supposed to show up from California (R. 212).

(b) Testimony of George H. Thomas, Jr., constable and deputy sheriff of Scottsdale, that he talked to Boyd in the Ellingson house and probably discussed the fact that he was operating a house of prostitution there (R. 216).

(c) Testimony of Ray M. Andress, F.B.I. agent: that on June 21, 1955, Boyd admitted he had run a house of prostitution in Scottsdale; that Constance Bell and Marion Berg had worked there as prostitutes (R. 243); that Boyd said there had been several telephone conversations between him and Ege while he was in Scottsdale (R. 244). That on September 6, 1955, Boyd told him that Ege wanted Boyd to say that he did not have any telephone conversation with Ege from Arizona and that he told Ege he couldn't do that because there had been a number of conversations (R. 247).

(c) There is no competent evidence establishing that Boyd ever became a member of the alleged conspiracy.

Though the evidence may be sufficient to establish that a conspiracy existed between Ege, Constance Marie Bell and Judy Berg for the transportation in interstate commerce of these women for purposes of prostitution, there is no competent evidence to establish that Boyd ever became a part of this conspiracy.

Constance Bell testified that she never met Boyd until after she arrived at the Ellingson house in Scottsdale (R. 165); she further testified that she never had telephoned to Boyd (R. 164, 166).

There is no competent evidence in the record that Boyd and Ege ever had any meetings, talks or agreements relative to prostitution before or after Ege took over the lease on the house on Monterey Boulevard.

There is no evidence in the record that Boyd and Bruno ever met, talked or agreed as to the transportation of any woman from California to any other state. In fact there is no evidence in the record that Bruno had anything to do with the conspiracy charged.

The only competent evidence against Boyd relating to the alleged conspiracy and his connection therewith is as follows: that prior to May, 1953, Boyd had leased and occupied the house on Monterey Boulevard, San Francisco; that in May Boyd told the owner, Gene Giomi, that he was going to leave the state and that Mr. and Mrs. Ege would carry on his obligations and take over the lease; that thereafter Ege occupied the premises (Testimony of Giomi, R. 196).

The next evidence as to the Boyds is that on September 20, 1953, Mr. and Mrs. Boyd registered at the El Rancho Motel in Phoenix, Arizona, where they stayed until October 21; that the Boyds made long distance calls to San Francisco, parties spoken to unknown (Testimony of Rathsen, R. 204-208).

That on October 6, 1953, S. W. Ellingson rented a house in Scottsdale to J. B. Boyd for one year, first and last months rent paid in advance; that the Boyds moved out on October 20th (Testimony of Ellingson, R. 201-3).

That Constance Marie Bell (and Judy Berg) arrived in Arizona sometime in October, 1953, where she (they) started working as prostitutes in the Ellingson house (Bell, R. 75). There is no evidence that either the Bell or Burke woman ever knew Boyd until they arrived in Scottsdale or ever had any contact with him.

Briley, the operator of the Pink Pony Bar, testified that on 3 or 4 days a week he visited the Scottsdale house during the two weeks it was opened (R. 267), that he recognized Constance Bell and Judy Berg as two of the women he saw there (R. 266); that Constance Bell was not there all of the two weeks the house was opened (R. 267).

Thomas, the Scottsdale constable, testified that he visited the house in Scottsdale and there saw Boyd, Mrs. Boyd, a black-headed woman and two blonde ladies (R. 216, 217).

Constance Bell testified that she left Scottsdale for California at the instigation of Ege (R. 77).

There is no evidence that Boyd knew of this talk between Bell and Ege or had anything to do with Constance Bell going from Arizona back to California.

That Boyd operated a house of prostitution in Scottsdale for about two weeks may be admitted for purposes of argument and that Constance Bell and probably Judy Berg worked there as prostitutes. But there is no evidence to establish that Boyd had anything to do with these or any other women coming from California to Arizona or from leaving Arizona for California.

Boyd was not on trial for operating a house of prostitution in Arizona or anywhere else.

There is not one bit of testimony that prior to the coming to Arizona of Bell and Berg or anyone else that Boyd knew they were coming from California, or that he had arranged with Ege or anyone else that they were to come to Arizona, or that Ege or anyone else had informed him they were coming from California to Arizona for purposes of prostitution or at all.

There is no evidence that Boyd knew anything about Bell or Berg until they arrived at the house in Scottsdale.

All of Constance Bell's testimony as to her activities and those of Ege after she left Arizona, her going to Delano as a prostitute, her going to Barstow where she was arrested in a raid on a house of prostitution, her going to Sacramento and Isleton where she worked as a prostitute, her giving her earnings to Ege, may be competent evidence against Ege; but there is no evidence that Boyd had anything to do with these activities or that he even knew of these matters. Each and all of these matters were the independent acts of Bell and Ege. As independent acts of Bell and Ege they formed no part of the conspiracy here charged. Several independent conspiracies cannot be put together to form one conspiracy and proof of independent conspiracies between different members of one claimed conspiracy does not furnish proof of the one conspiracy charged against all alleged conspirators (Cf. *Kotteakos v. United States*, 328 U.S.

750; *Tinsley v. United States*, (8 Cir.) 4 F. 2d 891; *Terry v. United States*, (9 Cir.) 7 F. 2d 28, 30; *Minner v. United States*, 57 F. 2d 506, 512).

It may be argued by the government that, as a conspiracy existed between Ege and Bell and possibly Judy Berg that Bell and Berg be transported from California to Arizona for purposes of prostitution, when Boyd took these women into the Scottsdale house as prostitutes he adopted and became a part of such conspiracy. Such is not the law.

Before one can become a member of a pre-existing conspiracy he must know the purpose and object of such conspiracy and having such knowledge participate in the unlawful enterprise (*Marino v. United States*, (9 Cir.) 91 F. 2d 691; *Lee v. United States*, (9 Cir.) 106 F. 2d 906; *Dahly v. United States*, (8 Cir.) 50 F. 2d 37). Those having no knowledge of the conspiracy are not conspirators (*United States v. Falcone*, 311 U.S. 205, 210, 85 L.Ed. 128, 132; *Direct Sales Co. v. United States*, 319 U.S. 703, 711, 87 L.Ed. 1674; *Morrison v. California*, 291 U.S. 82, 93, 78 L.Ed. 664, 672).

Here, there is not one whit of testimony that Boyd had any knowledge of any conspiracy, agreement or arrangement between Ege and Bell or Berg or anyone else that Bell or Berg or any other woman was to be transported from California to Arizona or Nevada or from Arizona to California.

III. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH
VENUE IN THE NORTHERN DISTRICT OF CALIFORNIA
OR TO CONFER JURISDICTION ON THE TRIAL COURT.
(Specification of Error No. 3.)

We understand that the foregoing insufficiency of the evidence to establish venue and jurisdiction is being argued in the brief filed on behalf of appellant Bruno. We adopt such argument without setting forth the same herein.

CONCLUSION.

For each of the foregoing reasons the judgment against Joseph Boyd should be reversed.

Dated, San Francisco, California,
June 4, 1956.

Respectfully submitted,
LEO R. FRIEDMAN,
*Attorney for Appellant
Joseph Boyd.*

the first of these is the fact that the
 second of these is the fact that the
 third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

the first of these is the fact that the
 the second of these is the fact that the
 the third of these is the fact that the

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

APPELLANT EDWARD RAYMOND EGE'S OPENING BRIEF.

GEORGE T. DAVIS,

Room 300, 98 Post Street, San Francisco 4, California,

Attorney for Appellant

Edward Raymond Ege.

FILE

JUN 27 1964

Subject Index

	Page
Jurisdictional statement	2
The indictment	3
Statutes involved	7
Questions presented	7
Specifications of error relied upon	8
The evidence	8
Further proceedings	9
Argument	9

I.

- A. The evidence was insufficient to support the verdict of guilty on Count 1 (Specification of Error 1a) 9
- B. The evidence was insufficient to establish the conspiracy charged in Count 2 (Specification of Error 1b) 11
- C. The evidence was insufficient to establish venue in the Northern District of California or to confer jurisdiction on the trial court (Specification of Error 1c)..... 12

II.

- Improper instructions given to the jury and the rejection of proper and lawful instructions requested by appellant. (Specification of Error 2) 13

III.

- Improper admission of evidence and misconduct of the trial court (Specification of Error 3) 14
- Conclusion 15

Table of Authorities Cited

Cases	Pages
Hill v. United States (C. A. 8), 150 F. 2d 760	11
La Page v. United States (C. A. 8), 146 F. 2d 536	11

Codes	
Title 18, U.S.C., Section 371	1, 7
Title 18, U.S.C., Section 398	11
Title 18, U.S.C., Section 2421	1, 2, 7, 9, 10, 11
Title 18, U.S.C., Section 2422	10, 11
Title 18, U.S.C., Section 3231	2
Title 28, U.S.C., Section 1291	2
Title 28, U.S.C., Section 1294(1)	2

Constitutions	
United States Constitution, Sixth Amendment	2

No. 14,955

IN THE

**United States Court of Appeals
For the Ninth Circuit**

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

**Appeal from the United States District Court for the
Northern District of California,
Southern Division.**

APPELLANT EDWARD RAYMOND EGE'S OPENING BRIEF.

Edward Raymond Ege (hereinafter referred to as Ege), appellant herein, together with two other persons, was indicted on June 15, 1955, in the United States District Court for the Northern District of California and charged in Count 1 with knowingly transporting in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution (Title 18, U.S.C. §2421), and in Count 2 with conspiring knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution (Title 18,

U.S.C., §371; Title 18, U.S.C., §2421). [R. 3-6.] Following a trial by jury, appellant was convicted on each of said counts and sentenced to five years imprisonment, said sentences to run consecutively, making a total of ten years. [R. 37-39.]

This is an appeal from the judgment of the court. [R. 46-47.]

JURISDICTIONAL STATEMENT.

1. The jurisdiction of the District Court:

Title 18, U.S.C., §3231, provides that, "The District courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." The Constitution of the United States, Amendment 6:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury in the state and district wherein the crime shall have been committed."

2. The jurisdiction of this Court upon appeal to review the judgment in question:

Title 28, U.S.C., §1291, provides:

"The courts of appeal shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . . except where a direct review may be had in the Supreme Court."

Title 28, U.S.C., §1294(1), provides:

"Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

“(1) From a district court of the United States to the court of appeals for the circuit embracing the district;”

3. The pleadings necessary to show the existence of jurisdiction:

(a) The Indictment. [R. 3-6.]

(b) The Bill of Particulars. [R. 15-16.]

(c) Verdict of Jury. [R. 29.]

(d) Motion for New Trial [R. 31-33] and denial thereof. [R. 37.]

(e) Judgment and Commitment. [R. 48-50.]

(f) Notice of Appeal. [R. 46-47.]

(g) Statement of Points on Appeal. [R. 370-371.]

4. The facts disclosing the basis upon which it is contended that the District Court had jurisdiction and this Court has jurisdiction to review the judgment in question will be stated more fully in the subsequent development of the facts of the case. To avoid repetition, the statement is omitted here.

THE INDICTMENT.

The indictment was in two counts. The appellant was made a defendant in both counts. The prosecution contended that both counts related to the same subject matter. The indictment provides as follows:

INDICTMENT

First Count: (Title 18, United States Code, Section 2421.) The Grand Jury charges that:

Edward Raymond Ege, defendant herein, did on or about the 17th day of October, 1953, in the City and County of San Francisco, State and Northern District of California, knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution.

Section Count: (Title 18, United States Code, Section 371.) The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, at a time and place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the objects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts:

Overt Acts

1. In June 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City

and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.

11. In October 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. Gordon Tyndall,
Foreman.

STATUTES INVOLVED.

Title 18, U.S.C., §371, provides:

“If two or more persons conspire either to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be (punished as in such statute provided).”

Title 18, U.S.C., §2421, provides:

“Any person who shall knowingly . . . cause to be transported . . . in interstate . . . commerce . . . any woman or girl for the purpose of prostitution . . . shall be (punished as in such statute provided).”

QUESTIONS PRESENTED.

1. Whether there was sufficient evidence to sustain a conviction of the appellant Ege on Count 1.
2. Whether there was sufficient evidence to sustain a conviction of the appellant Ege on Count 2.
3. Whether there was sufficient evidence to establish the jurisdiction and venue in the District Court for the Northern District of California.
4. Whether the appellant Ege was accorded a fair trial in the circumstances of this case.
5. Whether the trial court should have required special verdicts with respect to the overt acts alleged in the indictment (Count 2) under the circumstances of this case.

SPECIFICATIONS OF ERROR RELIED UPON.

1. Insufficiency of the evidence.
 - (a) The evidence is insufficient to support the verdict of guilty on Count 1,
 - (b) The evidence is insufficient to establish the conspiracy charged in Count 2, and
 - (c) The evidence is insufficient to establish venue in the Northern District of California or to confer jurisdiction on the trial court.
2. Improper instructions given to the jury and the rejection of proper and lawful instructions requested by appellant.
3. Improper admission of evidence and misconduct of the trial court.
 - (a) The trial court improperly admitted evidence of the reputation and character of appellant Bruno as part of the Government's case, thereby prejudicing this appellant to such an extent as to deny him a fair trial.
 - (b) The jury was prejudiced by remarks of the prosecutor and trial judge as to the safety of a Government witness (Bell) in such a manner that appellant Ege was denied a fair trial.
 - (c) A prejudicial variance developed among the indictment, the Bill of Particulars and the Government's evidence to such an extent as to deny appellant Ege a fair trial.

THE EVIDENCE.

The evidence produced by the Government in support of the indictment consisted primarily of the testimony of the woman (Constance Marie Bell) alleged to have been transported and to have been the subject of the conspiracy. Portions of her testimony were sought to be corroborated by other witnesses.

All of the evidence pertinent to the appeal herein, including the testimony of appellant Ege, has been

summarized in the opening brief of appellant Bruno, pages 9 to 16 and Appendix A, Section A and Section B, pages 1 to 7, and in the opening brief of appellant Boyd, pages 4 to 20, and appellant Ege hereby adopts the summary of testimony contained and set forth in said briefs without again setting forth the same herein.

FURTHER PROCEEDINGS.

At the close of the testimony offered on behalf of Ege [R. 283-332] the jury was instructed. [R. 334-356.] Exceptions to instructions by defense counsel for Ege were then taken. [R. 356-358.] Thereupon the jury returned its verdict finding the appellant guilty under the first count and second count of the indictment.

Counsel for appellant Ege then made a motion for a new trial [R. 31-33] which was denied by the court. [R. 37.] Thereafter the court pronounced judgment. [R. 38-39.]

ARGUMENT.

I.

A. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE VERDICT OF GUILTY ON COUNT 1. (Specification of Error 1a.)

Under the testimony of the witness Bell the circumstances of her trip from Arizona to California were not in violation of §2421, Title 18, of the United Staets

Code, under which Count 1 of the indictment is laid, and therefore to which it is restricted.

Bell's testimony in substance is that Ege found her a job in Phoenix [R. 71]; that he said she could go there from California with a girl named Judy and shares expenses with Judy [R. 71]; that she went to Phoenix with Judy [R. 71]; that Ege gave her \$50.00 for her share of expenses [R. 72]; that subsequently Ege suggested by telephone that she go from Arizona to Delano, California [R. 78]; that Ege told her to fly to California and to buy her ticket out of money she had earned [R. 80]; that later Ege picked her up at Barstow, California, and drove her in his Cadillac to Las Vegas where she worked at Roxy's for a day [R. 87]; that she returned to San Francisco in a bus [R. 88].

It will be noted that the offense charged in the indictment, Count 1 thereof, is "... transport ... from San Francisco, California, to Scottsdale, Arizona, a woman ..." [R. 3.] In the Bill of Particulars it is stated that the "woman" referred to is Bell. [R. 15.]

The events described would fall within the purview of §2422 of Title 18, United States Code, which is an entirely separate and distinct crime.

The pertinent language in the two sections is: Section 2421:

"Any person who shall knowingly ... cause to be transported ... in interstate ... commerce ... any woman or girl for the purpose of prostitution";

and Section 2422:

“Any person who shall knowingly persuade, induce . . . any woman or girl to go from one place to another in interstate . . . commerce . . . for the purpose of prostitution.”

In *La Page v. United States* (C. A. 8), 146 F. 2d 536, appellant was the operator of a house of prostitution at Fargo, North Dakota, in which one Dora Thomas had been an inmate, but had left for a vacation at Minneapolis, Minnesota. Appellant telephoned to Thomas, asking her to return, which she did. As stated by the court (p. 537): “Baldly, the evidence is that Dora Thomas made this interstate journey at her own expense because of appellant’s telephone request and that both women understood the immoral purpose for which the trip was to be taken.” Appellant was charged and convicted under Title 18, U.S.C. §398 (now §2421). Although a dissenting opinion was filed in the *La Page* case, the same Court of Appeals in a subsequent decision, unanimously approved the majority opinion of *La Page v. United States*, *supra*, in *Hill v. United States* (C. A. 8), 150 F. 2d 760.

B. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH THE CONSPIRACY CHARGED IN COUNT 2. (Specification of Error 1b.)

The argument contained in the opening brief of appellant Bruno, filed herein, pages 18 to 28, argues that the evidence was insufficient to sustain the conviction of appellant Bruno on the charge of conspiracy

(Count 2). Appellant Ege adopts said argument without setting forth the same herein.

The argument contained in the opening brief of appellant Boyd filed herein, pages 27 to 38, argues that the evidence was insufficient to sustain the conviction of appellant Boyd on the charge of conspiracy (Count 2). Appellant Ege adopts said argument without setting forth the same herein.

If as contended, the evidence is insufficient to show a conspiracy between Ege and Boyd and also is insufficient to show a conspiracy between Ege and Bruno, then it follows that it is insufficient to sustain the conviction of Ege on Count II of the indictment (conspiracy) since Ege cannot be guilty of conspiracy with himself.

C. THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH VENUE IN THE NORTHERN DISTRICT OF CALIFORNIA OR TO CONFER JURISDICTION ON THE TRIAL COURT. (Specification of Error 1c.)

The insufficiency of the evidence to establish venue and jurisdiction is argued in the opening brief of appellant Bruno, pages 28 to 39. Said argument in said opening brief of appellant Bruno is directed to the question of venue and jurisdiction as to Count 2 of the indictment. Appellant Ege adopts said argument and submits that the same is applicable insofar as appellant Ege is concerned as to Count 1 of the indictment as well as to Count 2.

II.

IMPROPER INSTRUCTIONS GIVEN TO THE JURY AND THE REJECTION OF PROPER AND LAWFUL INSTRUCTIONS REQUESTED BY APPELLANT. (Specification of Error 2.)

The court erred in not instructing the jurors that they must all agree on at least one of the overt acts.

The court instructed the jury that to establish the charge of conspiracy the Government must prove at least one of the overt acts set forth in the indictment. [R. 341-344.] The court failed to instruct that the jurors must all concur on at least one of the overt acts before a verdict of guilty could be found.

Mr. Stout (attorney for Ege) objected and excepted to the court's charge as failing to instruct as follows: "Unanimity of the jury as to the overt act proved by the government." [R. 357.] The court denied the objection. [R. 358.]

The foregoing failure of the court to instruct that the jurors must all agree on at least one of the overt acts charged requires a reversal of the judgment.

The failure of the court to so instruct that the jurors must all agree on at least one of the overt acts charged is also argued fully in the opening brief of appellant Boyd, pages 21 to 27, and said argument is adopted by appellant Ege without setting forth the same herein.

Also, the same point is argued in the opening brief of appellant Bruno, pages 42 to 53, and said argument is likewise adopted by appellant Ege without setting forth the same herein.

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

LLOYD H. BURKE,

United States Attorney,

RICHARD H. FOSTER,

Assistant United States Attorney,

422 Post Office Building,

Seventh and Mission Streets,

San Francisco 1, California,

Attorneys for Appellee.

FILE

AUG 30 1956

PAUL P. O'BRIEN, CLERK

Subject Index

	Page
Questions presented	Preface
Jurisdiction	1
Statement of the case	1
The defendants	3
The facts	4
Argument	10
I. There is no prejudicial variance between the conspiracy charge and the conspiracy proof	10
II. The evidence is sufficient	18
III. There need not be direct evidence that appellant Bruno knew Constance Marie Bell was transported in interstate commerce	29
IV. Overt acts committed in the Northern District of California were proved	35
V. A special verdict was unnecessary	43
VI. The jury was instructed its verdict must be unanimous	46
VII. The remarks of the court and government counsel were not prejudicial	47
VIII. Appellants were properly charged with conspiracy to violate Section 2421 of Title 18 United States Code, and appellant was properly charged with a substantive violation of that section	54
IX. The counts in the indictment need not have been separated	58
Conclusion	60
Appendix	

Table of Authorities Cited

Cases

	Pages
Adkins v. Brett, 184 Cal. 252	24
Adolfson v. U. S. (9th Cir. 1947) 159 F.2d 883	20
Allen v. U. S., 4 F.2d 688	22, 38
American Tobacco Company v. U. S., 328 U.S. 781	22
Anderson v. U. S. (9th Cir.) 273 Fed. 677	43
Aplin v. U. S. (9th Cir. 1930) 41 F.2d 495	30
Barcott v. U. S. (9th Cir.) 169 F.2d 929	10, 39
Baush Machine Tool Co. v. Aluminum Company of America, 79 F.2d 217	21
Beard v. U. S. (1936) 82 F.2d 837	54
Bedell v. U. S., 78 F.2d 358	21
Berger v. United States (1935) 295 U.S. 78	11, 16, 17
Blackford v. U. S. (10th Cir. 1952) 195 F.2d 896	35
Blumenthal v. United States (1947) 332 U. S. 539	11, 13, 14, 15, 16, 17
Bridgman v. United States (9th Cir. 1950) 183 F.2d 750 ..	17
Briggs v. U. S. (10th Cir. 1949) 176 F.2d 317	28
Bruno v. U. S. (9th Cir. 1933) 67 F.2d 416	44
Canella v. United States (9th Cir. 1946) 157 F.2d 470	17
Chevillard et al. v. U. S. (9th Cir. 1946) 155 F.2d 929	20
Clark v. U. S. (5th Cir.) 213 F.2d 63	33
Coates v. United States (9th Cir.) 59 F.2d 173	12, 22, 38
Cornett v. U. S., 7 F.2d 531	37
Cramer v. United States (1944) 325 U.S. 1	44
Daeche v. United States (2d Cir. 1918) 250 Fed. 566	19
D'Aquino v. U. S. (9th Cir. 1951) 192 F.2d 338	20
Davena v. U. S., 198 F.2d 230	20, 26
Direct Sales Company v. U. S., 319 U.S. 703	32
Gage v. United States (9th Cir.) 167 F.2d 122	11
Galatas v. U. S. (8th Cir.) 80 F.2d 15	12, 31
Gendelman v. U. S. (9th Cir.) 191 F.2d 993	11, 39
Glasser v. United States, 315 U.S. 60	11, 25
Gray v. United States (8th Cir. 1949) 174 F.2d 919	43

TABLE OF AUTHORITIES CITED

iii

	Pages
Henderson v. United States (9th Cir.) 143 F.2d 681	11, 39
Heskett v. U. S. (9th Cir.) 58 F.2d 897	43
Interstate Circuit v. United States, 306 U.S. 208	55
Kepl v. United States (9th Cir.) 299 F. 590	44
Kotteakos v. United States (1946) 328 U.S. 750 ..	10, 11, 15, 16, 17
Langford v. U. S. (9th Cir. 1949) 178 F.2d 48	30
Lawrence v. U. S. (9th Cir.) 162 F.2d 156	56
Ledbetter v. United States, 170 U.S. 606	42
Lee v. U. S. (9th Cir. 1939) 106 F.2d 906	30
Lefco v. United States (3d Cir. 1934) 74 F.2d 66	12
Levey v. United States (9th Cir.) 92 F.2d 688	55
Luteran v. U. S. (8th Cir.) 93 F.2d 395	32
Mangum v. United States (9th Cir. 1923) 289 Fed. 213.....	19, 20
Marino v. United States (9th Cir. 1937) 91 F.2d 691	12, 22, 55
McDonald v. United States (8th Cir.) 89 F.2d 128	12, 31
Mellor v. U. S. (8th Cir. 1947) 160 F.2d 757	35
Mutual Life Insurance Company v. Hellman, 145 U.S. 285..	22
Ochoa v. U. S. (9th Cir. 1948) 167 F.2d 341.....	48
Oppper v. U. S. (1954) 348 U.S. 84	20
Paddock v. U. S. (9th Cir.) 79 F.2d 872	21
Parmagini v. U. S. (9th Cir.) 42 F.2d 721	43
Pasadena Research Laboratories v. United States (9th Cir.) 169 F.2d 375	11
Pearlman v. United States (9th Cir. 1926) 10 F.2d 460.....	19, 26
People v. Alcalde, 24 Cal. 2d 177, 186	22
People v. Weatherford, 27 Cal. 2d 401	22
Peterson v. U. S., 4 F.2d 702	37
Pine v. U. S. (5th Cir.) 135 F.2d 353	33
Roberts v. United States (9th Cir.) 248 F. 873	55
Robinson v. United States (9th Cir.) 33 F.2d 238	55
Rubio v. U. S. (9th Cir.) 22 F.2d 766	43
Samuel v. United States (9th Cir. 1948) 169 F.2d 787	44
Schrader v. U. S. (8th Cir. 1948) 94 F.2d 926	56
Shama v. U. S. (8th Cir. 1938) 94 F.2d 1	30

	Pages
Smith v. United States, 348 U.S. 147	20
Stromberg v. California (1930) 283 U.S. 359	44
Sullivan v. U. S. (9th Cir.) 32 F.2d 992	54
Tedesco v. U. S. (9th Cir.) 118 F.2d 737	30
U. S. v. Angelo (3d Cir. 1946) 153 F.2d 247	48
U. S. v. Bazzel (7th Cir.) 187 F.2d 878	34
United States v. Buckner, 108 F.2d 921	55
U. S. v. Bucur (7th Cir. 1952) 194 F.2d 297	34
U. S. v. Crimmins (2d Cir.) 123 F.2d 271	33
U. S. v. Mack (2d Cir. 1940) 112 F.2d 290	33
U. S. v. Noble (3d Cir. 1946) 155 F.2d 315	43
U. S. v. Rosenberg (2d Cir. 1952) 195 F.2d 583	15, 16
U. S. v. Socony Vacuum Oil Company, 310 U.S. 150	11
U. S. v. Thayer (7th Cir. 1954) 209 F.2d 538	47
Van Huss v. U. S. (10th Cir. 1952) 197 F.2d 120	33
Van Riper v. United States, 13 F.2d 961	55
Wagner v. U. S. (5th Cir.) 171 F.2d 354	57
Wibye v. U. S., 87 Fed. Supp. 830	22
Wiggins v. U. S. (9th Cir.) 64 F.2d 950	20
Williams v. North Carolina (1944) 317 U.S. 287	44
Woitte v. U. S. (9th Cir.) 19 F.2d 506	43
Womble v. U. S. (9th Cir. 1945) 146 F.2d 263	29
Wright v. U. S. (8th Cir.) 175 F.2d 384	56
Wynkoop v. United States (9th Cir. 1927) 22 F.2d 799	19
Younge v. U. S. (4th Cir. 1917) 242 Fed. 788	42

Statutes

18 United States Code:

Section 371	App. i, vi
Section 2421	54, 57, App. i, vi
Section 2422	54, 57
Section 3231	1

28 United States Code:

Section 1291	1
Section 1294(1)	1

Rules

Federal Rules of Criminal Procedure:	Pages
Rule 8a	58, 60
Rule 30	52
Rule 52b	48

Texts

Wigmore on Evidence, 3d Ed., Section 1770	21
---	----

QUESTIONS PRESENTED.

1. Is there prejudicial variance between the conspiracy charge and the conspiracy proof?
2. Is the evidence sufficient?
3. Must the corpus delicti be established independently of the admissions of the defendant?
4. Is there evidence aliunde against each co-conspirator?
5. Must proof of intent to transport in interstate commerce be established by direct evidence?
6. Must there be a special verdict on each overt act of a conspiracy charge?
7. Were the court's instructions proper?
8. Were any remarks of the court or government counsel prejudicial?
9. Were appellants properly charged under Section 2421 of Title 18 United States Code?
10. Were the defendants in the indictment properly joined under Rule 8a of the Federal Rules of Criminal Procedure?

No. 14,955

IN THE

**United States Court of Appeals
For the Ninth Circuit**

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

JURISDICTION.

Jurisdiction is invoked under Section 3231 of Title 18 and Sections 1291 and 1294(1) of Title 28, United States Code.

STATEMENT OF THE CASE.

Appellants were indicted on June 15, 1955 (Tr. 7). Appellant Ege was charged with transporting women in interstate commerce for the purpose of prostitution and with conspiracy to transport women in interstate commerce (Tr. 3-7). The other appellants were named in the conspiracy count only (Tr. 3-7). A mo-

tion to dismiss the indictment on the grounds that the indictment did not state an offense was filed and denied (Tr. 11, 25). A bill of particulars was filed by the government stating the dates on or about which the overt acts, in pursuance of the conspiracy, allegedly occurred, and alleging that Constance Marie Bell was one of the women whom appellants conspired to transport and the woman alleged to have been transported in the substantive count of the indictment (Tr. 15-16). On September 26 a motion for "separate trial of counts of the indictment" was heard and denied (Tr. 25). Thereafter a jury was impaneled and appellants were tried before United States District Judge Edward P. Murphy (Tr. 25). At the close of the government's case appellants moved for judgment of acquittal. This motion was taken under submission by the court (Tr. 27, 280). The record does not disclose whether a motion for judgment of acquittal was made at the close of the whole case or what were the grounds of the motion made at the close of the government's case. After argument by all counsel and instructions by the court the case was submitted to the jury for decision (Tr. 29, 360, 365). After deliberating an hour and ten minutes the jury found appellants guilty of all counts of the indictment in which they were charged (Tr. 29-31). The motions for judgment of acquittal were then denied (Tr. 30). Motions for a new trial were made and denied, and motions for arrest of judgment were made and denied (Tr. 30, 37). Appellant Ege was sentenced to a term of five years on the first count and five years on the second count, to run con-

currently (Tr. 38). The other appellants were sentenced to five year terms (Tr. 38). Appeal was then timely made to this Court (Tr. 46, 47).

THE DEFENDANTS.

Edward Raymond Ege.

Appellant Ege was a procurer of women for houses of prostitution (Tr. 64, 65, 66-68, 70, 71). The witness Constance Marie Bell testified that Ege had arranged for her employment at brothels in Folsom, California (Tr. 67, 68, 69), Scottsdale, Arizona (Tr. 71), Delano, California (Tr. 77), Isleton, California (Tr. 81), Newberry, California (Tr. 83), Las Vegas, Nevada, at "Roxy's" place (Tr. 86), and Suisun, California (Tr. 89). Various women lived at his home at 396 Monterey Boulevard, in San Francisco (Tr. 95, 103, 111). At the time of the indictment three or four girls worked as prostitutes for his benefit (Tr. 98). One of these girls was his wife (Tr. 99, 104). At least some of the women staying at his home in San Francisco were prostitutes, including both Constance Marie Bell and one Judy Berg, who traveled from San Francisco to Scottsdale, Arizona with Bell (Tr. 71, 102). At this time Ege also owned a bordello in Folsom, California, with one Frank Alvernaz (Tr. 69, 287).

Joseph Victor Bruno.

Appellant Bruno, in the period covered by the indictment, owned a brothel in Delano, California (Tr. 79). He apparently also operated this brothel

(Tr. 80). He employed Constance Marie Bell in his house of prostitution in the latter part of October and the first part of November, 1953 (Tr. 137). At that time he offered the services of three or four prostitutes (Tr. 137). Apparently he had operated there for several years prior to the indictment.

Joseph Boyd.

Appellant Boyd operated a brothel in Scottsdale, Arizona, during October of 1953 (Tr. 201, 203, 216). He advertised girls from California (Tr. 212). Constance Marie Bell and Judy Berg were employed in his bordello (Tr. 75). Boyd admittedly knew Bruno and the fact that Bruno operated a house of prostitution in Delano, California (Tr. 237, 245, 246). He was also aware that Constance Marie Bell had gone to Delano, California, from his brothel in Scottsdale, Arizona (Tr. 245). He was a friend of Ege's (Tr. 288). He had, in fact, turned over to Ege the home in San Francisco in which the prostitutes Constance Marie Bell and Judy Berg were maintained prior to coming to his bordello in Arizona (Tr. 196).

THE FACTS.

The conspiracy in this case was apparently formed in San Francisco some time prior to June, 1953. In May or June of that year, appellant Ege assumed the lease of the premises at 395 Monterey Boulevard from appellant Boyd (Tr. 200). 395 Monterey Boulevard was a stopping off place for prostitutes (Tr. 67,

102). Ege procured the girls (Tr. 96). Two of the girls who stopped at 395 Monterey Boulevard went to Scottsdale to work at the Boyd brothel (Tr. 75). Ege, at the time of the trial, admitted that both Bell and Berg stayed at the Monterey Boulevard residence and that "other kids stayed there—a lot of kids stayed there." (Tr. 309, 310).

The first overt act of the conspiracy count of the indictment reads as follows:

"1. In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California."

At 2545 Noriega Street—a market owned by Mr. Gene Giomi—appellant Ege took over the lease on the home at 395 Monterey Boulevard from appellant Boyd (Tr. 196, 308). The Monterey Boulevard property was utilized as a rendezvous for prostitutes sent from San Francisco to Scottsdale, Arizona, for work in the Boyd bordello (Tr. 71, 102). At the time of the termination of Boyd's tenancy and Ege's assumption of the lease, Boyd, in Ege's presence, stated that he intended to leave the state (Tr. 196). He, in fact, went to Phoenix, Arizona, where he attempted to rent a motel to be used as a brothel (Tr. 211). Even prior to renting the property in Scottsdale, which he operated as a house of ill fame, Boyd informed a bar owner (Charles Briley) that he was getting two girls from California (Tr. 212). Shortly before the time of Boyd's conversation with the bar owner, Ege was

persuading Constance Marie Bell to take up the life of a prostitute (Tr. 63, 94, 172). Judy Berg, the other prostitute secured for the Scottsdale establishment, arrived at Monterey Boulevard the day after Bell was persuaded to enter prostitution (Tr. 97).

The second and third overt acts of the conspiracy count of the indictment read as follows:

“2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.”

“3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.”

Constance Marie Bell's transportation from the Sarong Club to the Monterey Boulevard residence was obviously undertaken by Ege for the purpose of persuading Bell to join the prostitution racket (Tr. 62). Overt act 3 concerns the conversation had between Ege and Bell following the transportation referred to in overt act 2, in which appellant Ege painted the advantages of a prostitute's life to Bell. This conversation was an act calculated to effect one object of the conspiracy, which was to secure girls from San Francisco for the Arizona brothel.

Over act 4 charges that:

“4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom,

California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.”

Constance Marie Bell testified that she was taken by Ege to Folsom after spending a week at Monterey Boulevard (Tr. 68, 69). She received her training as a prostitute there (Tr. 69). Thereafter, Ege informed Bell of the job at the Boyd bordello (Tr. 71). Ege told Bell to go there with Judy Berg, apparently the other girl from California referred to in Boyd's conversation with the bar owner Charles Briley (Tr. 71, 212). Ege gave Bell \$50 for the trip (Tr. 72).

Overt act 5 alleges that Bell received the telephone number of Boyd from Ege. However, it appears that Judy Berg, rather than Bell, actually recorded the number (Tr. 73). The number, however, was discussed in her presence (Tr. 73). The girls then drove to Phoenix, Arizona, utilizing the \$50 supplied by Ege for the expenses of the trip (Tr. 117). They 'phoned Joseph Boyd but did not reach him. Thereafter, however, contact was made by telephone (Tr. 73). The girls were then driven to Scottsdale, and Bell began to work for Boyd as a prostitute (Tr. 74, 76).

Business was bad at Scottsdale and Ege, who had remained in San Francisco (Tr. 123), telephoned Bell to tell her to go to Delano, California (Tr. 76, 77). In this conversation Ege indicated that Delano, California, was “opening” (Tr. 77) and that she was to fly there (Tr. 78). Appellant Ege gave Bell appellant Bruno's telephone number and told her to call

Bruno when she changed planes at Burbank. She was to tell Bruno what time the plane was to arrive in Bakersfield (Tr. 78). It is to be noted that overt act 8, which reads as follows, "8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.", refers to the above conversation where the transportation of Bell from Arizona to Delano was effectuated.

Bell did fly to Bakersfield from Phoenix, Arizona, in accordance with Ege's instructions (Tr. 78). While changing planes in Los Angeles she telephoned Joseph Bruno's establishment (Tr. 78). On her arrival in Bakersfield she was met by appellant Joseph Bruno (Tr. 78). Bruno then drove Bell from Bakersfield to his Delano, California, house of prostitution in his Cadillac automobile (Tr. 78). It is to be noted that overt act 9 reads as follows:

"9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California."

Bell worked as a prostitute in Delano for approximately two or three weeks (Tr. 80). Bruno's principal activity at the house of prostitution was apparently concerned with the counting of the money obtained by the girls from their customers (Tr. 80).

After leaving Bruno's brothel, Constance Marie Bell was met by appellant Ege in Fresno and driven back to the Monterey Boulevard residence in San Francisco secured from Boyd (Tr. 80). The money

earned by Bell from her work as a prostitute in Delano and Arizona was given by her to appellant Ege in either San Francisco or Fresno (Tr. 186). Overt act 10 reads as follows:

“10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.”

In November of 1953, Bell went to Barstow, California, where she entered into work as a prostitute at Newberry, California (Tr. 85). This trip was taken on the instance of appellant Ege (Tr. 155) and Ege received the \$100 or \$200 Bell earned (Tr. 155, 188, 189). Overt act 13 reads as follows:

“13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.”

Overt act 14 reads as follows:

“14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City of Barstow, State of California, to the City of Las Vegas, State of Nevada.”

Constance Marie Bell testified that Ege drove her in his Cadillac automobile from Barstow to Las Vegas, Nevada, where she worked at one “Roxy’s” one day as a prostitute (Tr. 87).

ARGUMENT.**I. THERE IS NO PREJUDICIAL VARIANCE BETWEEN THE CONSPIRACY CHARGE AND THE CONSPIRACY PROOF.**

It is the contention of appellants that the evidence in the case necessarily proves two rather than one conspiracy and the fact that one conspiracy only was charged resulted in a prejudicial variance between the charge and the proof under the rule of *Kotteakos v. United States* (1946) 328 U.S. 750. Appellants do not contend that the court below instructed that the jury might convict even if it found that more than one conspiracy existed between the appellants. Indeed, they could not so contend since the court told the jury:

“You are instructed that the evidence must establish the conspiracy charged; evidence that establishes another conspiracy or several other conspiracies will not sustain a verdict.”

The gist of the argument appears to be the contention that Boyd and Bruno each participated in separate unrelated acts, and that the government has “produced the hub, and a loose spoke or two, but no rim to tie them together in a related whole.” (Appellant Bruno’s brief, p. 49).

There is no burden on the government in this proceeding to establish that the evidence in the case was *only* susceptible of the inference that one general conspiracy was formed between appellants. On appeal, the appellate court must adopt the inferences most favorable to the government’s case.

Barcott v. United States (9th Cir.) 169 F.2d 929, 931, cert. denied;

Henderson v. United States (9th Cir.) 143 F.2d 681;
Pasadena Research Laboratories v. United States (9th Cir.) 169 F.2d 375, cert. denied;
Gendelman v. United States (9th Cir.) 191 F.2d 993.

Neither is this Court concerned with the weight of the evidence bearing on this issue. All that is required is that there be substantial evidence in the record indicating that appellants engaged in one general conspiracy.

Glasser v. United States, 315 U.S. 60;
Gage v. United States (9th Cir.) 167 F.2d 122, 124;
United States v. Socony Vacuum Oil Company, 310 U.S. 150, 254.

Furthermore, even if two conspiracies were proved, appellants are not entitled to a reversal unless this variance, if variance there be, deprived them of a fair trial.

Kotteakos v. United States, *supra*;
Berger v. United States (1935) 295 U.S. 78.

The conspiracy formed one broad scheme.

It is not necessary that a conspirator know all the details of the conspiracy or of the participation of others in the scheme.

Blumenthal v. United States (1947) 332 U.S. 539, 557.

Secrecy and concealment are essential features of a successful conspiracy. A conspirator need only know the essential nature of the plan.

Marino v. United States (9th Cir. 1937) 91 F.2d 691;

Lefco v. United States (3rd Cir. 1934) 74 F.2d 66.

The knowledge of the membership of the conspiracy is immaterial as is also a knowledge of how the spoils are to be divided.

Coates v. United States (9th Cir.) 59 F.2d 173.

If a defendant aids the conspirators, knowing in a "general way" their purpose to break the law, a jury may infer that he entered into an agreement with them.

McDonald v. United States (8th Cir.) 89 F.2d 128;

Galatas v. United States (8th Cir.) 80 F.2d 850.

In the instant case, appellants have pointed out the obvious fact that each conspirator had a definite part to play in the conspiracy and a definite interest in some aspect of it not shared by the other conspirators. Boyd, to be sure, was more interested in the transportation of Constance Marie Bell from San Francisco to Phoenix, Arizona than he was in her transportation from Phoenix to Delano, California. His business was located in Arizona. His pecuniary interest in the plan concerned the work that Bell and Berg did at his establishment. Bruno, on the other

hand, operated his place in Delano, California and was most interested and most concerned with Constance Marie Bell's services in his brothel and in the transportation that made those services available to him. Ege, of course, was equally concerned with all the transportations since each resulted in his financial advancement.

In *Blumenthal v. United States*, supra, appellants were involved in a conspiracy to sell black market whiskey. The case involved three salesmen and two owners of a distributing company. Each salesman, of course, was only interested in the particular whiskey which he sold. Furthermore, the salesmen were not aware that another individual, known to the two owners of the distributing company, actually owned the whiskey. A contention was made that several agreements were involved. The Supreme Court, however, rejected the argument.

The court held that each agreement formed in the case was merely a step in the formation of the larger and ultimately more general conspiracy (at 557).

In the case before this Court, appellant Bruno must have known that he was acquiring the services of one who had worked at brothels before and who would be employed by brothels other than his own in the future. The evidence adduced at the trial indicated that prostitutes are engaged in the same kind of "here today and gone tomorrow" business as those who, in days past, entertained on the vaudeville circuits. Bell, herself, was at many houses in the few months covered by the indictment. Boyd knew when Bell left his

place that she would go somewhere else, most probably to a place selected by her California residing "pimp." He also knew that if she continued to engage in the prostitution business she would probably work at his house again. Bell was launched by Ege on the prostitution circuit. Each individual brothel owner, while playing his own special part in the scheme to transport prostitutes in interstate commerce, would of necessity know that other brothel owners would be involved, each playing a part in the conspiracy similar to his own but in different places and at different times.

There is a clear analogy between the facts in the instant case and the facts in the *Blumenthal* case. To be sure, here the services of a prostitute are involved rather than blackmarket whiskey. However, one lot of whiskey was involved in the *Blumenthal* case and the proof in the instant case involves, for the most part, one prostitute. While Bruno's part in the conspiracy was apparently limited to the transportation from the Boyd brothel in Arizona to his brothel at Delano, California he had knowledge that his participation was a part of a larger plan, that is, the shipment of Bell from place to place in accordance with the demand in various localities for prostitutes. It cannot be argued that the fact that Boyd and Bruno are not shown to have ever met during the course of the conspiracy precluded their membership in one broad illegal scheme. The court observed, in *Blumenthal v. United States*, *supra*, at (pages) 556 and 557:

"The law does not demand proof of so much. For it is most often true, especially in broad schemes calling for the aid of many persons, that

after discovery of enough to show clearly the essence of the scheme and the identity of a number participating, the identity and the fact of participation of others remain undiscovered and undiscoverable. Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without requiring evidence of knowledge of all its details or of the participation of others. Otherwise the difficulties, not only of discovery, but of certainty in proof and of correlating proof with pleading would become insuperable, and the conspirators would go free by their very ingenuity."

The metaphor of the spokes and the rims of wheels is possibly of little help in this case. It should be observed, however, that the victim in this case was a prostitute traveling on a prostitution circuit. Two of the places she stopped on the way were Boyd's and Bruno's brothels. In fact, she traveled from one to the other. Boyd and Bruno, whether spokes or part of the rim, were brothel owners causing the transportation of a prostitute from one place of employment to the other. In this case, one prostitute common to all was involved, just as in the *Blumenthal* case one lot of blackmarket whiskey was involved but in *Kotteakos*, a number of separate unrelated false statements were made.

In *United States v. Rosenberg* (2nd Cir. 1952), 195 F. 2d 583, an argument was made that since Zobel was involved only in a part of the secrets which were

transmitted to the Communists, his inclusion in the trial of the Rosenbergs, who were involved with atomic secrets, was improper. The court, however, rejected the argument. In the *Rosenberg* case, as here, all defendants were actuated by a single unified purpose; in this case, the transportation of Bell in interstate commerce for the purpose of employment on the prostitution circuit.

We believe that the observation of the court in the *Blumenthal* case expresses our views in this case.

“We think, therefore, that in every practical sense the unique facts of this case reveal a single conspiracy of which the several agreements were essential and integral steps, and accordingly that the judgments should be affirmed.” (*Blumenthal v. United States*, *supra*, at 559).

There was no prejudicial mass trial here.

In order to secure a reversal of their conviction appellants must show more than a mere variance between the charge and the proof. They must show that the variance prejudiced their right to a fair trial. The real dangers in a case where one conspiracy is charged but a number of conspiracies are proved is the danger that guilt will be transferred from one to another from the effect of a mass trial and the inability of counsel to determine the nature of the offense he is called upon to defend. In *Kotteakos v. United States*, *supra*, the Supreme Court distinguished *Berger v. United States*, *supra*, on the grounds that in the *Kotteakos* case, although one conspiracy was charged, 8 conspiracies were proved. The court observed that in *Berger* there were but 2 con-

spiracies and 4 defendants, while in *Kotteakos* there were 8 conspiracies and 32 defendants. In the instant case the most that can be claimed by appellants is that there are 2 conspiracies and 3 defendants—the same number of conspiracies as in *Berger v. United States*, but one less defendant. Thus by the very reasoning of *Kotteakos v. United States* itself there is no prejudicial variance here.

Appellant Ege is not benefited by the variance argument at all. All the cases agree that the prime conspirator cannot complain that other persons accused of conspiring with him are not proved connected with each other.

Canella v. United States (9th Cir. 1946) ;
Kotteakos v. United States, supra.

In *Bridgman v. United States* (9th Cir. 1950) 183 F.2d 750, this Court expressed the true principle involved in the *Kotteakos* case. The prohibition is against mass trials. Here there were a limited number of defendants. There is no problem in this case of the guilt of one defendant being confused with the guilt of the other defendants, as in the case of *Kotteakos* where 32 defendants were charged. In *Blumenthal v. United States* the court discussed the risks common to mass trials (at page 560) and observed that, in view of the trial court's caution, the risk of transference of guilt was reduced to the minimum. The instruction there read as follows:

“The guilt or innocence of each defendant must be determined by the jury separately. Each defendant has the same right to that kind of consideration on your part as if he were being tried alone.”

The instruction in the instant case was even more solicitous for the appellants' right to have their case tried on its own merits. It reads as follows:

“Although the indictment in this case charged three defendants with the offenses set forth therein, you are instructed that you must determine the guilt or innocence of each defendant in this case as if he were the only defendant on trial. Each defendant has the right to have you consider his individual guilt or innocence independently from the guilt or innocence of the other defendants in the case.” (Tr. 349).

In view of the nature of the evidence in this case, the limited number of defendants, and the scrupulously fair instructions of the court, even if the court accepts the appellants' contention that several conspiracies rather than one general conspiracy were proved, no fatal variance has been shown.

II. THE EVIDENCE IS SUFFICIENT.

All relative evidence can be considered.

In discussing the sufficiency of the evidence, appellant Boyd, from page 31 through 34, lists a number of items of evidence which he claims cannot be considered against Boyd to determine his guilt. This evidence falls into two categories. The first involves statements made by other conspirators during the existence of the conspiracy, and the second involves statements made by the defendant Boyd himself.

Appellant Boyd argues, in reference to the statements made by him, that the court must disregard

them under what he calls, "The rule that the corpus delicti cannot be established by the extrajudicial statements, admissions, or confessions of the accused." (Page 31, Boyd brief). The rules of evidence, however, do not require such a result. The Ninth Circuit has never had the rule that the corpus delicti must be established independently of the extrajudicial statements of the defendant. Indeed, the very cases cited by appellant,

Wynkoop v. United States (9th Cir. 1927) 22 F.2d 799;

Mangum v. United States (9th Cir. 1923) 289 Fed. 213, and

Daeche v. United States (2d Cir. 1918) 250 Fed. 566

support the contrary rule, which is merely that the confession of a defendant must be corroborated. Judge Learned Hand in *Daeche v. United States*, supra, when discussing that the older view to the corpus delicti must be established independently of confession said,

"But such is not the more general rule which we are free to follow, and under which any corroborating circumstances will serve which in the judge's opinion go to fortify the truth of the confession. Independently they need not establish the truth of the corpus delicti at all, neither beyond a reasonable doubt nor by a preponderance of proof."

In *Pearlman v. United States* (9th Cir. 1926) 10 F.2d 460 this Court took the lead in rejecting the rule sought to be applied by appellant Boyd. The case was

cited with approval in the Supreme Court case of *Smith v. United States*, 348 U.S. 147, at page 156.

See also:

Mangum v. U.S. supra, at 216;

Davena v. U.S., 198 F.2d 230;

Wiggins v. U.S. (9th Cir. 1933) 64 F.2d 950-952 cert. denied;

Chevillard v. U.S. (9th Cir. 1946) 155 F.2d 929 at 935;

Adolfson v. U.S. (9th Cir. 1947) 159 F.2d 883 cert. denied;

D'Aquino v. U.S. (9th Cir. 1951) 192 F.2d 338 at 357, cert. denied.

The Supreme Court, itself, relying on the *Pearlman* case, supra, rejects the statement made by counsel that, "The extrajudicial statements of a defendant are inadmissible in the absence of independent proof of the corpus delicti." (Page 31, appellant's brief). In *Opfer v. U.S.*, 348 U.S. 84, 1954, at 92, 93, the Supreme Court of the United States considered the corroborations necessary for admissions, and after reviewing the authorities, stated,

"However, we think the better rule to be that the corroborative evidence need not be sufficient independent of the statements to establish the corpus delicti."

In asking this Court to disregard the statements made by Boyd, appellant is simply asking this Court to rely on a rule which has long been repudiated by it.

Furthermore, the statements made by Boyd to Charles W. Briley, the owner of the Pink Pony Bar

in Scottsdale were not admissions at all, but were statements made in pursuance of a conspiracy and constituted acts calculated to effect the object of the conspiracy.

The defendant Boyd discussed with the bar owner Briley his interest in acquiring a residence in Scottsdale, Arizona to be used for the purpose of prostitution (Tr. 210-211). He told Mr. Briley that he was getting two girls from California (Tr. 212). Mr. Boyd, in other words, was advertising his wares. He was acquainting his market in Scottsdale with the merchandise he had to offer. It may well be that a California product would be of more interest and of a more saleable nature than the local product.

The conversation with Mr. Briley by Mr. Boyd was not an extrajudicial admission. It constituted a verbal act. The act in this case was one of advertising prostitutes to be secured by an interstate transportation. As Wigmore indicates in Section 1770 (Wigmore on Evidence, 3d Ed.), this kind of utterance may be proved without violation of the hearsay rule because the utterance is not offered to evidence the truth of the matter which may be asserted within it. See for example *Baush Machine Tool Co. v. Aluminum Company of America*, 79 F.2d 217, 220, 224, where the court admitted evidence of a conversation quoting prices, and see also *Bedell v. U.S.*, 78 F.2d 358. In *Paddock v. U.S.* (9th Cir.) 79 F.2d 872, this Court reversed the lower court for excluding conversations detailing employment terms.

This conversation would also be admissible under another exception to the hearsay rule as a declaration of present intention. That is an intention to import prostitutes into Arizona from California. See

Mutual Life Insurance Company v. Hellman,
145 U.S. 285;

People v. Weatherford, 27 Cal. 2d 401, 421, 422;

People v. Alcalde, 24 Cal. 2d 177, 186;

Wibye v. U. S. (D.C. N.D. Ala.), 87 Fed. Supp.
830, 832.

This evidence was admissible and relevant to prove Boyd's crime and need not have been disregarded by the jury and should not now be disregarded by this Court.

Evidence that co-conspirators acted in concert with Boyd may be considered against him.

Evidence of action in concert is sufficient to show a conspiracy.

American Tobacco Company v. U. S., 328 U.S.
781.

A common design is the essence of a conspiracy and such a design may be made to appear when the conspirators steadily pursued the same object whether acting separately or together by common or different means, all leading to the same unlawful result.

Allen v. U. S., 4 Fed.2d 688, 691;

Coates v. U. S., 50 Fed.2d 173, 174.

Part of the evidence which appellant Boyd contends should be disregarded concerns the appellant Ege's meeting with Constance Bell, the acts and declaration

by which he convinced her to begin a life of prostitution (appellant Boyd's brief, page 32) and in addition Ege's declaration to Bell that there was a job for Judy Berg and her in Phoenix, Arizona. (Appellant Boyd's brief, page 32.) Shortly after both those conversations appellant Boyd had the conversation referred to above with Mr. Charles W. Briley (Tr. 210-212). In this conversation Mr. Boyd referred to two girls that were to come from California (Tr. 212), obviously referring to Constance Marie Bell and Judy Berg, who did, in fact, come to his house of prostitution (Tr. 117, 74, 76). The fact that Mr. Boyd had a conversation with Briley concerning two girls from California becomes evidence of a conspiracy between Ege and Boyd, because shortly prior to the conversation Ege had secured two girls to work in the Boyd bawdy house. Here we have the evidence of acting in concert in pursuance of a common design for the accomplishment of a common purpose, which is referred to in *Marino v. United States* (9th Cir.), 91 F.2d 691, cert. den., cited by appellants.

Since a conspiracy requires two persons or more it follows that acts done by others in pursuance of its object must be admissible against a defendant in order that his connection with the conspiracy may be shown. In a narcotic case when arrangements are made by one co-conspirator for a sale of narcotic delivery to take place at a certain time and at a certain place, the conduct of the other co-conspirator in arriving at that certain place, at that certain time with the narcotics becomes evidence of a conspiracy only by refer-

ence to the declarations of the other co-conspirators. Any declarations, therefore, by co-conspirators which tends to show a concert of action between them is admissible against them, even though all the conspirators are not present at the time of the declaration.

Appellant Boyd's objection to the evidence of declaration by others than himself seems to be grounded on the view that evidence is not admissible unless the defendant was present. Counsel apparently is of the same view as many lawyers who feel that if activities do not take place in the presence of the defendant evidence of those activities are inadmissible. Justice Olney of the California Supreme Court had occasion to comment on this view in the case of *Adkins v. Brett*, 184 Cal. 252. The court said at pages 254-255:

“One objection to the evidence of these conversations, which may as well be disposed of at the outset as involving the most elementary principles of evidence, is that they were had without the presence of the defendant. The answer to this objection is that it is wholly immaterial whether the defendant was present or not. The competency of evidence of declarations or statements by a person other than the party to the action against whom they are introduced is not affected merely by the latter's presence or absence. If the evidence be not competent if the party against whom it is sought to introduce it was not present when the statements or declarations were made, no more is it competent if he were present. There are apparent exceptions to this, but they are only apparent and not real exceptions . . .”

In a conspiracy case, as has been stated above, evidence of the acts and declarations of co-conspirators are necessarily admissible against a defendant for the light that they throw on the defendant's conduct. If his conduct, in conjunction with their's, shows the necessary concert of action, the conspiracy charge is made out. Just as it takes the evidence of the conduct of two parties to prove a contract, it takes evidence of the conduct of at least two co-conspirators to make a conspiracy.

Appellant Boyd argues that the declaration of Ege referred to above cannot be considered against him because there is lack of proof *aliunde* of a conspiracy. We agree with appellant that there must be evidence *aliunde* before declarations of one co-conspirator are admissible against another.

Glasser v. U. S., 315 U.S. 60.

This rule is, however, subject to the limitation that the acts and declarations of one must be considered in conjunction with the acts and declarations of the other.

In one sense the acts and declarations of Boyd with reference to the bar owner Briley from the necessary independent evidence to make the declarations of Ege admissible against him. Clearly what the court intends by requiring independent evidence or evidence *aliunde* is merely that a defendant's connection with a conspiracy be shown before he can be found guilty of a conspiracy. Once his connection with the conspiracy is shown, and it can be shown only in connection with the acts of his co-conspirators, their acts and declarations past, present and future become binding on him.

There is sufficient corroboration of Boyd's admissions.

Boyd admitted that he operated a brothel in Scottsdale, Arizona (Tr. 243). He admitted also that Constance Marie Bell and Judy Berg had worked for him there (Tr. 243). He also said that he knew Bruno had been operating a house of prostitution in Delano and he knew that Bell had gone there to work (Tr. 245-246). He also admitted that there had been a number of telephone conversations between Ege and him while he was in Scottsdale (Tr. 244). As a matter of fact, he stated to Special Agent Andrus of the Federal Bureau of Investigation, "Well, if taking telephone calls is conspiracy, then I have committed conspiracy" (Tr. 243). All this evidence is admissible under the rule in *Davena v. U. S.*, supra, and *Pearlman v. U. S.*, supra, because it has been sufficiently corroborated. There was evidence that Boyd had advertised two prostitutes were coming from California (Tr. 212). Bell testified that she and Judy Berg did, in fact, come to Scottsdale from San Francisco for the purpose of practicing prostitution and did practice prostitution in Boyd's bordello (Tr. 117, 74, 76). The evidence of a concert of action between Ege's procurement of Bell and Boyd's advertisement of California prostitutes has already been referred to. Mr. Gene Giomi testified that a lease was transferred to Ege's from Boyd on the home at 395 Monterey Boulevard which was utilized as a rendezvous for prostitutes, at least two of which actually worked for Boyd (Tr. 71, 102, 196). Boyd's admissions are not only corroborated, but as a matter of fact, there is sufficient

evidence in the record to convict him even if they be disregarded.

There is evidence aliunde against each co-conspirator.

The fact that a number of transportations of Constance Marie Bell for immoral purposes were made is not seriously denied by any of the appellants. Each, however, attempts to limit the evidence in the case to evidence of his own acts and declarations. As was indicated above, the evidence against one co-conspirator cannot be considered in vacuum. It becomes relevant only by reference to the acts and declarations of the other co-conspirators in the case. The transfer of the lease of the rendezvous on Monterey Boulevard becomes meaningful only in conjunction with Boyd's statement that he intended to go to Phoenix, Arizona, the testimony of Constance Bell concerning the prostitutes who stayed at 395 Monterey Boulevard, and Boyd's advertisement of girls from California in Arizona.

Appellant Bruno's reception of Constance Marie Bell at the Fresno Airport becomes meaningful only in the light of instructions given by Ege to Bell in Arizona. Here is evidence of a concert of action. Bell merely telephones and says she is to arrive at an airport at a certain time and Bruno miraculously arrives and takes her immediately to his illegal place of business. Constance Marie Bell testified that Bruno met her at the airport (Tr. 78). She also testified that she was driven by Bruno from the airport to his Delano, California bawdy house (Tr. 78), and that she

worked as a prostitute there for two or three weeks (Tr. 80). There is evidence that Bruno counted the money obtained by prostitutes from their customers at his bawdy house (Tr. 80).

As to the appellant Ege it will be pointless to recapitulate the overwhelming evidence pointing towards his guilt. Ege was a principal defendant in the case. He secured Constance Marie Bell's employment in both the Boyd and Bruno brothels, and other bawdy houses as well.

There is independent evidence as to each defendant showing his connection with a conspiracy to transport women in interstate commerce for the purpose of prostitution.

In *Briggs v. U. S.*, 176 F.2d 317 (10th Cir. 1949) the court stated:

"It is a common design which is the essence of the conspiracy or combination and this may be made to appear when the parties steadily pursue the same object whether acting separately or together by common or different means, but always leading to the same unlawful result."

Here, each conspirator had the common design causing prostitutes to be transported in interstate commerce in accordance with the need and demand for prostitutes in Arizona, Nevada, and California. Each defendant had his own part to play in the scheme. They played their parts at different times and different places, but for a common purpose. All defendants were in the prostitution racket. Ege acted as an agent,

and procured women for the two bawdy house entrepreneurs. They supplied the market for Miss Bell's particular kind of services. It took all to make the conspiracy.

III. THERE NEED NOT BE DIRECT EVIDENCE THAT APPELLANT BRUNO KNEW CONTANCE MARIE BELL WAS TRANSPORTED IN INTERSTATE COMMERCE.

Appellant Bruno argues that there was no direct evidence of appellant Bruno's knowledge that Constance Marie Bell had come from Arizona. There was no evidence that appellant Bruno had given any statement to the Federal Bureau of Investigation concerning his knowledge of Miss Bell's origin and he did not testify concerning his knowledge or lack of it at the trial. It is the contention of appellant Bruno that without direct evidence of such knowledge the jury could not infer that Bruno conspired with the others to transport prostitutes in interstate commerce.

A search of cases fails to disclose any case where this precise issue was before the court. The majority of the cases dealing with the quantum and nature of proof required to prove intent in White Slave cases deals with the defendant's intent or lack thereof that the women transported be utilized for immoral purposes.

See for example

Womble v. U. S. (9th Cir. 1945) 146 F.2d 263 where there was no direct evidence that the defendant had intended that the victim should practice prostitution. This court there observed:

“The law is settled that in prosecutions for violation of the White Slave Act the jury or court may infer intent from all the circumstances of the evidence.”

In *Langford v. U. S.* (9th Cir. 1949) 178 F.2d 48, the defendant drove the victim to Tijuana, married her, then returned to Los Angeles, where the victim began to practice prostitution. There was no direct evidence in this case that the defendant intended his wife to practice prostitution following the Tijuana marriage. This Court however, observed:

“It is elementary that the intent, motive or purpose necessary for the establishment of a crime may rest in inference.”

See also

Tedesco v. U. S. (9th Cir.) 118 F.2d 737, 741;

Shama v. U. S. (8th Cir. 1938) 94 F.2d 1;

Aplin v. U. S. (9th Cir. 1930) 41 F.2d 495.

In the *Lee* case (9th Cir. 1939) 106 F.2d 906, cited by appellants, the defendant charged with conspiracy met the victim in a house of prostitution in Seattle, removed her from the house and transported her to Portland, Oregon. The defendant testified that he did not know of the prior transportation by his co-defendants from Portland to Seattle for the purposes of prostitution and to put her in the house in which he found her. This Court observed:

“There is no evidence to the contrary [his testimony] and nothing in the record from which the contrary may be inferred.”

In this case there is no testimony that Bruno intended only to cause Constance Marie Bell to be transported in intrastate commerce. The inference presented to the jury was that Ege arranged with Bruno for the employment of Bell. There is no testimony that Ege lied to Bruno concerning the origin of Bell's transportation. Bruno, as a matter of fact, met Bell at the conclusion of her plane trip from Arizona (Tr. 78).

Here the circumstances were such that it was extremely unlikely that Bruno was under any misapprehension as to Bell's place of origin. In any event, however, Bruno did not raise this issue at the trial. If Ege or Bell told him that she traveled only in California appellant Bruno did not choose to place this evidence in the record. The jury did not require to make an inference not supplied to it by the evidence. The fact was that Bell came from Arizona. There is no evidence that Bell or Ege made any concealment of that fact. The jury, therefore, was not required to find that they did so.

Bruno is charged with a conspiracy to violate the White Slave Act. When a defendant aids conspirators knowing in a "general way" their purpose to break the law the jury may infer that he entered into an agreement with them.

McDonald v. U. S. (8th Cir.) 89 F.2d 128;

Galatas v. U. S. (8th Cir.) 80 F.2d 15.

In this case Bruno aided the conspiracy by furnishing Bell with a place to ply her trade. He benefited financially from her activity (Tr. 80). There is direct evi-

dence that he knew that she had been transported for appellant Bruno actually met her at the airport (Tr. 78). There is direct evidence that he intended to break the law since the trade at which he employed Bell was illegal in itself. It has been said that where proof of a conspiracy has been established a relatively small amount of evidence connecting the defendant therewith is sufficient to sustain a verdict.

Luteran v. U. S. (8th Cir. 1937) 93 F.2d 395, 398.

Here there is direct evidence of appellant Bruno's aid to the conspiracy and that he profited from it (Tr. 78).

In addition, there was evidence of the transient nature of prostitution employment. In a period of less than two months Bell worked in six or seven houses of prostitution. She worked in Folsom, California (Tr. 67, 68, 69), Scottsdale, Arizona (Tr. 71), Delano, California (Tr. 77), Newberry, California (Tr. 83), Isleton, California (Tr. 81), Las Vegas, Nevada (Tr. 86), and Suisun, California (Tr. 89). The evidence further showed that Bruno was an experienced participant in the prostitution racket.

The jury could infer that a man with Bruno's experience would know that Bell would be shipped from place to place in accordance with the demand in various localities for prostitutes. We do not have here a case where the product shipped interstate is of an innocuous nature. The Supreme Court in *Direct Sales Company v. U. S.*, 319 U.S. 793 had occasion to draw the distinction between the legitimate objects of commerce and those by their nature illegal. The *Direct*

Sales Company case involved narcotic drugs and their shipment in pursuance of orders therefor. The court there indicated that a company might not close its eyes to the consequence of its actions, so, too a brothel owner cannot close his eyes to the possibility that the girls he meets at airports might come from out of state.

In *Pine v. U. S.* (5th Cir. 1943) 135 F.2d 353, a contention similar to that made here was made. The defendant there knew the character of the night-club which had received girls from out of the state. There was no direct proof that he knew the specific girls involved had been so transported. The court, however, referred to the peril of taking part in the prostitution business and affirmed his conviction.

It has long been held, of course, that one knowingly receiving stolen property acts at the peril of having them stolen in the course of an interstate shipment.

Clark v. U. S. (5th Cir. 1954) 213 F.2d 63, 64;
U. S. v. Crimmins (2d Cir.) 123 F.2d 271, 273.

In *Van Huss v. U. S.* (10th Cir. 1952) 197 F.2d 120, the defendant supplied title and engine numbers to stolen automobiles. There was no direct evidence that he knew the cars were transported in interstate commerce. However, the court held that the defendant had cooperated in a manner to become an essential part of the crime. In *U. S. v. Mack* (2d Cir. 1940) 112 F.2d 290, where the charge was conspiracy, among other things, to keep an alien prostitute without reg-

istering; that the keeper of a brothel was put at his peril to learn whether a prostitute was an alien.

Conspiracies are rarely, if ever, proved by direct evidence.

U. S. v. Bazzel (7th Cir. 1951) 187 F.2d 878.

When there is a showing, however, that two or more persons engaged in interrelated steps of a plan the inference of a conspiracy is justified. All that is necessary is that there be shown a concerted scheme where each plays "essentially coordinated roles."

U. S. v. Bucur (7th Cir. 1952) 194 F.2d 297, 301.

Here, in respect to the defendant Bruno, we have all the separate interrelated steps which show a common scheme. Ege calls Bell in Arizona and informs her that an opening exists for her services in Delano. He gives her instructions on how to make contact with the brothel owner Bruno. Bruno, with apparent complete understanding of the nature of the plan, meets Bell at the airport, receiving from her no other information other than the time of her arrival. She has no conversation with Bruno, but immediately goes to work. The inference is unmistakable. An agreement was reached between Bruno and Ege concerning the transportation of Bell from the bordello in Arizona to the bawdy house in Delano. From all these circumstances in the case, the nature of the prostitution business, Bruno's connection with it, the meeting at the airport, Ege's conversation with Bell, presupposing an agreement with Bruno, the jury could

infer that Bruno was connected with the conspiracy. In *Mellor v. U. S.* (8th Cir. 1947) 160 F.2d 757, all the evidence showed was that the defendant took a girl across the border to Wyoming and engaged in immoral acts. The court held that this evidence was sufficient to prove his illegal purpose. There will rarely, if ever, be direct evidence of defendant's knowledge of certain facts. *Blackford v. U. S.* (10th Cir. 1952) 195 F.2d 896. All that can be expected in the way of proof is that evidence of sufficient facts to put the defendant on notice of the possible illicit character of the transported merchandise be adduced. The circumstantial evidence in this case was such that the jury could infer that the defendant had joined the illegal agreement to transport prostitutes in interstate commerce. Direct evidence of Bruno's intention when he aided that transportation should not be and is not required. In this case, as in most others, circumstantial evidence of conspiracy is sufficient.

IV. OVERT ACTS COMMITTED IN THE NORTHERN DISTRICT OF CALIFORNIA WERE PROVED.

It is the contention of the appellants that the court lacked jurisdiction because, they claim, no overt act was committed in the Northern District of California.

Overt act 1 charges as follows:

"In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege went to 2545 Noriega Street, San Francisco, California, State and Northern District of California."

Appellant Bruno claims at page 34 of his brief that
“No evidence whatsoever was offered in support
of this overt act.”

It may be suggested that counsel has neglected to read the record carefully. Mr. Giomi whose market was at 2545 Noriega Street testified that he was introduced to Mr. Ege by Mr Boyd and that Mr. Ege took over the obligation of Mr. Boyd on the house at Monterey Boulevard which was used as a rendezvous for prostitutes (Tr. 196). It was then that Mr. Boyd declared he intended to leave the state (Tr. 196). He did, in fact, leave the state and rent a house in Scottsdale, Arizona in which he advertised the services of two prostitutes who were to come from California (Tr. 212). Mr. Ege testified at page 308 of the transcript as follows:

“Q. And what transpired after this conversation that you had with Mr. Boyd out at 395 Monterey? What did you do then with reference to getting the lease?

A. Well, we went over to Jean's Market and we talked to this fellow and Joe asked him if it was all right if I took over the lease, and he said it was fine with him, and he told him I was in the Sarong Club at 875 Geary Street, and he said, well, it was O.K. with him if I went ahead and took over his lease.

Q. So you and Boyd went to Jean's Market at Noriega Street [293] and had a discussion with Mr. Giomi, is that right?

A. If the place was on Noriega, that's where we went to, Jean's Market.”

To be sure, the renting of the Monterey Boulevard establishment apparently took place in the month of May rather than the month of June. The bill of particulars, however, states that the conversation occurred *on or about* June 15. The government is not required to set forth the exact date on which a crime is committed, and the allegation of a day certain will permit proof of the admission of the crime on any other day within the statute of limitations.

Cornett v. U. S., 7 F.2d 531;

Peterson v. U. S., 4 F.2d 702.

Overt act 2 is claimed by appellant Bruno, at page 35, not to have taken place at all.

Overt act 2 reads as follows:

“In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.”

Constance Marie Bell testified at page 62, following her description of a meeting with Ege at the Sarong Club, as follows:

“Q. What happened between you and Ege after that meeting in the Sarong Club? Where did you go, and do, if anything?

A. We went out to his house.

Q. And where was that?

A. On Monterey Boulevard.

Q. In San Francisco?

A. Yes.

Q. And was that on the occasion right after this initial meeting with him at the Sarong Club?

A. Yes."

At page 35 of his brief, appellant Bruno makes this statement:

"She went there of her own accord with her friend Rosalie."

What relevance this has to a contention by appellant Bruno that overt act did not take place at all is difficult for appellee to undersand. The overt act alleges nothing concerning the voluntary and involuntary character of the trip. Ege obviously took Bell to the house at Monterey Boulevard for the purpose of persuading her to enter the prostitution business. It was, therefore, in pursuance of one of the objects of the conspiracy, which was to transport Bell to Scottsdale, Arizona to work as a prostitute in Boyd's brothel.

Overt act 3 refers to the conversation between Bell and Ege at 395 Monterey Boulevard where Constance Marie Bell testified Ege persuaded Bell to enter the prostitute racket (Tr. 62 through 65). Appellant objects that Boyd and Bruno were not present at this conversation. He concludes that in their absence "any conspiracy would necessary have to be performed thereafter" (Appellant's Brief, page 36). The cases are uniform, however, that conspirators need never have met.

Allen v. U. S., 4 F.2d 688, 691;

Coates v. U. S., 59 F.2d 173, 174.

The presence of the other co-defendants at the time of an overt act is entirely immaterial. Appellant Bruno has pointed to no reason whatsoever requiring the jury to find that the conspiracy was formed subsequent to Ege's recruitment of Bell in the prostitution racket. The inferences are all the other way, and on appeal those inferences most favorable to the government case are adopted.

Barcott v. U. S. (9th Cir.) 169 F.2d 929, 931;

Henderson v. U. S. (9th Cir.) 143 F.2d 681;

Gendelman v. U. S. (9th Cir.) 191 F.2d 993.

Appellant Bruno apparently seeks to have this Court infer that overt act 4 did not occur. Constance Marie Bell had testified that she had gone to Folsom to Ege's house of prostitution and had her first experience in prostitution work there (Tr. 68-69). The Folsom trip was obviously taken for the purpose of preparing Bell for her work in Arizona. At page 70 of the record the following testimony occurs:

"Q. (by Mr. Sparrow). Do you remember about when this was, Connie?

A. It was probably in the latter part of September.

Q. 1953?

A. Yes.

Q. What happened, you testified that you stayed at Folsom about a week or so, what happened thereafter?

A. I left. Eddie came and took me.

Q. And where did he take you?

A. Back to Monterey Boulevard.

Q. An how did he take you?

A. In his car.

Q. What sort of a car?

A. A Cadillac."

Appellant Bruno's arguments at page 36 of the brief concerning this overt act are based on a complete distortion of what the record discloses. Perhaps, to be charitable, however, appellant Bruno has merely failed to read the record with reference to this overt act.

As far as overt act 5 is concerned it appears that Judy Berg rather than Constance Marie Bell actually recorded the number of the defendant Joseph Boyd (Tr. 173). She was told, however, by Ege to telephone Boyd (Tr. 173). Overt act 5 was only important insofar as it involved an act by Ege calculated to bring together the prostitutes Bell and Berg with the brothel owner Boyd. There is no doubt but that his supplying the telephone number to the girls actually resulted in a meeting with Boyd and work by the girls in the Boyd house of prostitution.

Counsel for Bruno has felt called upon to question the government's good faith in reference to this overt act. The immaterial nature of the variance between the allegation and the proof, with reference to this overt act, causes some question in appellee's mind concerning the "reluctance" of appellant Bruno to question the government's honesty. In the course of a criminal trial it is inevitable that the evidence will at times vary from that originally expected by the government. It would be a sorry thing if the government's good faith could be questioned in every case where a variance occurred.

Overt act 8 is questioned because it is contended that no proof was introduced indicating that Ege had called from San Francisco. The obvious inference presented by the evidence in the case, however, was that San Francisco was the place of the call. Bell left Ege in San Francisco (Tr. 123). There was no evidence that he had gone anywhere else to make his telephone call. According to the evidence he was a resident of San Francisco. When not driving prostitutes across the state borders he remained there. If Ege were somewhere else than San Francisco when he made that call he could have so testified. He merely denied that the telephone call had taken place at all (Tr. 295). The jury was free to reject his testimony.

Overt act 10 charges that Ege accepted money from Bell in San Francisco. The evidence established that after leaving Bruno's brothel Bell was met by Ege in Fresno and driven back to San Francisco. Bell testified that she did in fact give Ege the money secured from her work as a prostitute, but that she could not recall whether Ege took it in San Francisco or in Fresno (Tr. 186).

In appellant's argument concerning the insufficiency of the evidence to establish that any of the overt acts charged occurred in the Northern District of California the same tendency is apparent as in their other arguments. Appellants would have this Court view the evidence in the light most favorable to them. In both their brief and their summaries of evidence they ignore evidence in favor of the government's case, and state as facts inferences not accepted by the jury. A

great deal is made of certain minor variances in the time, *on or about*, in which the overt acts in the conspiracy were committed. There is no intimation in any of the briefs how this difference in the dates prejudiced their defense. It must be remembered that the events involved in this case took place over a very short period of time. The question of time had nothing to do with the defendants' guilt or innocence of the charge.

The Supreme Court of the United States in the case of *Ledbetter v. United States*, 170 U.S. 606 stated:

“Good pleading undoubtedly requires an allegation that the offense was committed on a particular day, month and year, but it does not necessarily follow that the omission to state a particular day is fatal upon a motion in arrest of judgment. Neither is it necessary to prove that the offense was committed upon the day alleged, unless a particular day be made material by the statute creating the offense. Ordinarily, proof of any date before the finding of the indictment, and within the statute of limitations, will be sufficient.”

See also:

Younge v. U. S. (4th Cir. 1917) 242 Fed. 788, 793.

It is undisputed that Bell worked as a prostitute in Arizona, Delano and many other places. The evidence is overwhelming that Ege controlled her movements in that respect, and that Boyd and Bruno assisted him by supplying places of employment. When these

things occurred was unimportant. The fact that they occurred showed the existence of a conspiracy between the three appellants to violate the White Slave Traffic Act. All that is necessary to secure jurisdiction is that one overt act be committed within the jurisdiction of the court.

Rubio v. U. S. (9th Cir.) 22 F.2d 766;

Parmagini v. U. S. (9th Cir.) 42 F.2d 721;

Heskett v. U. S. (9th Cir.) 58 F.2d 897;

Woitte v. U. S. (9th Cir.) 19 F.2d 506.

The proof here sufficiently establishes that overt acts were committed in the Northern District of California.

V. A SPECIAL VERDICT WAS UNNECESSARY.

It has long been held that *only* general verdicts are proper in federal criminal cases.

Anderson v. U. S. (9th Cir.) 273 Fed. 677;

U. S. v. Noble (3d Cir. 1946) F.2d 315.

In *Gray v. United States* (8th Cir. 1949) 174 F.2d 919, the Court of Appeals reversed the trial court for requiring the jury to make special findings. The court stated that such action was not sanctioned by statute, Rules of Criminal Procedure, or any precedent. It declared such a verdict was an innovation in American criminal practice. As the court observed in the *Gray* case, the accepted procedure is to charge but one crime in one count, to accept one general plea to it, and to call upon the jury to make but one general response—guilty or not guilty.

Appellants cite *Cramer v. United States* (1944) 325 U.S. 1, for the proposition that special verdicts are required in a conspiracy case. The *Cramer* case was a treason case. The very basis for the reversal there was the difference in the nature of overt acts in treason cases from the nature of overt acts in conspiracy cases. Prosecution for treason is defined by the Constitution. The overt acts proved must correspond with the Constitutional definition of an overt act. Neither the *Cramer* case nor *Stromberg v. California* (1930) 283 U.S. 359, and *Williams v. North Carolina* (1944) 317 U.S. 287, upon which the *Cramer* case relies, stand for the proposition urged by appellants. The only other case which they present to this Court, *Samuel v. United States* (9th Cir. 1948) 169 F.2d 787, expressly repudiates their position. Citing *Kepl v. United States* (9th Cir.) 299 F. 590, this Court declared:

“It matters not that some overt acts alleged in the indictment were not sufficiently proved” (at page 796).

See also

Bruno v. U. S. (9th Cir. 1933) 67 F.2d 416.

The *Samuel* case turned upon the interpretation of the Price Control Act. The court expressly distinguished the situation there from one where a contention was made that certain overt acts in an indictment were supported by insufficient evidence in the following language:

“The *Kepl* case and those like it concern only the proof as to overt acts. It matters not that some

overt acts alleged in the indictment were not sufficiently proved. The reason for this is that since verdicts of juries must be viewed as the work of ordinary intelligent and reasoning beings, judges will not presume that a jury would find guilt upon an item not proved but that they would find guilt upon an item well proved. The difference between the instant and the cited cases is as plain as daylight. In our case intelligent and reasonable consideration by the jury of the whole case, as given it, would almost surely have lead to a wrong application of important testimony. In the cited case intelligent and reasonable consideration of the whole case would only result in a just verdict upon conclusions supported by evidence. In our case we are not concerned with the mere matter of insufficient proof as to some alleged overt acts. We are concerned with the stern fact that appellants may have been convicted of a conspiracy to violate a non-existent law or that they may have been convicted of a conspiracy to violate existing law because of the logical application of the non-existing law to the evidence introduced."

There is no reason for requiring a special verdict in a conspiracy case. The same arguments that may be urged in favor of such a special verdict may be advanced in favor of special verdicts in all criminal cases. It is always possible that the jury may have found one, but not all of the essential elements of the crime. The courts, however, have felt that justice is best secured by a general verdict of guilty and not guilty. While special verdicts are authorized in civil cases, they are not so authorized in criminal cases. In the lack of any Constitutional provision requiring or

authorizing such a procedure the District Court would have committed reversible error in adopting the procedure contended by appellants.

**VI. THE JURY WAS INSTRUCTED ITS VERDICT
MUST BE UNANIMOUS.**

One argument that is made by appellants seems somewhat obscure to appellee. At page 22 of appellant Boyd's brief it is claimed,

“Nowhere did the court instruct the jurors that they must all agree on at least one of the overt acts charged.”

The court stated:

“In order to convict or acquit the defendant on any count, you must reach a unanimous verdict as to each count. It will take all 12 of you to convict or acquit, as the case may be, on each count” (Tr. 349).

and further:

“Now, this is a criminal case, and as I have indicated before, your verdict must be unanimous; that is to say, all 12 of you must agree upon a verdict” (Tr. 363-364).

It is difficult for us to understand what more appellants desired the court to do, short of arguing their case for them. They admit that the requirements that an overt act be proved was explained to the jury. The record shows the court required that the jury's verdict be unanimous. On at least two occasions the court specifically instructed that a unanimous verdict was

required in language no one could misunderstand. This contention by appellants is completely without merit.

VII. THE REMARKS OF THE COURT AND GOVERNMENT COUNSEL WERE NOT PREJUDICIAL.

Appellants contend that certain remarks by the court and counsel during the course of the trial prejudiced the defendants to an extent justifying reversal.

The court, at page 146 of the record (quoted at page 43, appellant Bruno's brief) in answer to the question of an obviously excited, upset and hysterical witness, stated as follows:

"Just a moment. Just a moment: Just calm yourself. Now take it easy. You have been doing very nicely. Just answer the gentleman's questions. If you don't remember, just say so. Don't let him get you excited. I'll protect you. That is what I am here for.

Mr. Stout [Counsel for Mr. Ege]. I hope she doesn't need the protection, Your Honor.

The Court. If she does, she will get it.

Mr. Stout. I won't put her in a spot where Your Honor will have to protect her. I assure you of that.

The Court. You better not."

It is to be noted that no objections were made to the court's remarks at the time they were made, or as a matter of fact, at any other time until the matter was presented to this Court. In the absence of such an objection, the error, if any, is waived.

U. S. v. Thayer (7th Cir. 1954) 209 F.2d 538.

It could not be said that this remark by the court was such a plain error or defect that it might be noticed although not brought to the attention of the court under Rule 52b of the Federal Rules of Criminal Procedure. Comments of the court must be read in their context and viewed with a perspective of the whole proceedings.

Ochoa v. U. S. (9th Cir. 1948) 167 F.2d 341.

In this case the witness had been subjected to long and arduous cross-examination from vigorous counsel. A positive duty rested with the court to prevent cross-examination from degenerating into a badgering of the witness. The trial court and the trial court alone was in a position to judge the condition of the witness and the attitude of counsel. As the court stated in *United States v. Angelo* (3d Cir. 1946) 153 F.2d 247, the proper administration of justice requires the vesting of discretion in the trial judge,

“To stop cross examination, to control and direct the jury and to protect the trial from degenerating into a barren battle of words.”

Appellants have tried to imply that the remark of the court to which they now object was made in connection with the remark of government counsel, which they consider objectionable. At page 44 of appellant Bruno's brief this statement is made:

“The statement of prosecuting counsel that the witness feared retaliation, and the trial judge's statements of protection in connection therewith gratuitously repeated when the witness was being pressed for answers on material matters, must necessarily have created an adverse impression in

the minds of the jurors extending not only to the defendants, but to their respective counsel as well.”

This interpretation of the court's remarks is a complete distortion of what the record discloses. The remark concerning the witness' apprehension of retaliation was made at page 93 of the record. The court's remark occurred at page 146 of the record, over 50 pages later in the transcript, 50 pages of transcript in which the witness was subjected to more than vigorous cross-examination by appellants' industrious counsel. Prior to the time the court made the remarks objected to, the witness apparently came close to breaking down. At page 125 of the record the witness Constance Marie Bell answered as follows:

“A. Well, it wasn't Scottsdale that I was going to, but I was—I mean, when we went to Phoenix, it was in Phoenix that Judy was going to call Scottsdale or the motel there, I mean, they asked me questions that—I mean, that's—I mean, I answered them and then they sound like I'm contradicting myself, the way he puts it.”

The court answered this remark of the witness in the following way:

“The Court. That's all right. You're doing fine. Now, don't you allow these gentlemen—they are not trying to confuse you. They have a duty to perform to their clients, you understand.

A. I know. They're twisting me around.

The Court. They're not trying to embarrass you. They are only trying to perform their duties under their oath, you appreciate that?

A. Yes.

Q. Are you getting tired? [81]

A. Oh, I can go on."

No judge could have been more kind or solicitous of counsel and the rights of their clients than Judge Murphy was during these remarks. Vigorous cross-examination of a female witness to the extent that she comes close to breaking down is a two-edged sword. It may well be that the jury itself was beginning to feel that counsel was exceeding the bounds of propriety in "vigorous" cross-examination. Judge Murphy put the best face possible on counsel's actions. However, by page 146 of the record, the court obviously felt that the time had come to indicate to counsel that enough was enough. This, as a judge of the United States District Court, he was under duty to do. Furthermore, the court instructed the jury as follows:

"So therefore at the very outset I charge you that you must not consider for any purpose whatsoever any testimony or evidence which has been by order of the Court stricken out. Such testimony or evidence should be treated by you as though you had never heard it. * * * It may have occurred during the trial of this case that the Court has been called upon to make certain comments and ruling upon the objections of counsel and upon motions made by them. You should not draw any inference from any such remarks or comments or rulings of the Court that I may have had occasion to make that this Court was intending to convey to the jury in any manner whatsoever its view or opinion as to what the verdict or decision of the jury should be. Such comments as

I may have had occasion to make in that regard were only pursuant to the power, and indeed, the duty of the court to supervise the trial of this case and to expedite it."

The objection of appellants that Judge Murphy denied them a fair trial by his remarks is completely without merit, and demonstrates only the lengths they are required to go to find some fact in the record upon which to base an argument.

The Goldberg testimony.

Appellant Bruno complained that the prosecution, with what they call "the assistance of the trial judge," introduced evidence seeking to establish the reputation of appellant Bruno as a pimp. Page 40, appellant Bruno's brief. The evidence admitted at the trial not only sought, but did establish beyond any reasonable doubt that Bruno was a pimp. The evidence was uncontradicted that he operated a house of prostitution, bordello, bawdy house, or call it what you will, at Delano, California, and that his principal activity was counting money secured by the women employed there from the practice of prostitution. The witness John Goldberg only testified as to the meaning of certain expressions in the prostitution business. Constance Marie Bell had used those expressions in her testimony. The government attempted to qualify Mr. Goldberg, who apparently conducted a business ancillary to the prostitution racket, as an expert in the meaning of certain phrases in the prostitution business. In addition he was familiar with the character of the Delano house. Whether or not this testimony

was admissible is a closed question. The trial judge decided the question adversely to the government.

At page 352 the court instructed the jury as follows:

“I further instruct you that the testimony of the witness Goldberg—you remember him, the lingerie entrepreneur who came here—is stricken from the record, and that you are not to consider it for any purpose whatsoever.”

This testimony was stricken. The jury was instructed not to consider it in the case. Appellants were apparently satisfied with this instruction since at the time of exceptions to instructions they made no objections. The record does not disclose any motion made by appellant with particular respect to the Goldberg testimony, under Rule 30 F.R.C.P. Appellant Bruno's statement as to the court's action, with respect to the Goldberg testimony, as “the grossest single error” in the case gives rise only to this inference. If they consider the introduction of testimony stricken from the record the worst of the alleged errors on which they depend for reversal, the rest of their contentions must be weak indeed.

The prosecutor's remarks.

An objection was made by the attorney for the government, Mr. Sparrow, to a question requesting the witness Constance Marie Bell's address. The court overruled the objection, and addressed a remark to the government counsel, which in essence was a request for the reason for the objection. Mr. Sparrow answered the court by saying, “The witness is apprehensive of possible retaliation against her.” Nothing

was said concerning any threats, if any, made against the witness by the defendants, and counsel for the defense at no time questioned government counsel's good faith in the statement made to the court. The objection of government counsel was overruled, and the witness was required to give her address (Tr. 93). The court, after being requested to instruct the jury that they were not to draw any conclusions from the remarks of counsel stated, "I will do that at the proper time." Thereafter the court instructed the jury as follows:

"Now while it was your duty to listen and consider the arguments of the attorneys in the case, I instruct you that such arguments are not evidence, and that the only legitimate purpose of the arguments of the attorneys is to assist you in arriving at a proper verdict from the evidence in the case, applying to such evidence the law as given to you by the court."

And at page 355 the court observed:

"The defendants here are to be tried only on the evidence which is before this jury and not upon suspicions that may have been excited by questions of counsel, the answers to which were not permitted" (Tr. 355).

Appellants nowhere challenge Mr. Sparrow's good faith in responding to the court's question. The statement by counsel for the government was in pursuance of the duty of the United States Attorney to protect its witnesses. A witness for the government is not in a happy situation. The witness Constance Marie Bell in this case was subject to hours of grueling cross-

examination. She was forced to degrade herself before the jury. While it is, of course, the duty of defense counsel to represent their clients, it is no less a duty for government counsel to protect the government witnesses to the greatest extent possible. Judge Murphy handled this situation with the greatest possible fairness to the defense. See

Sullivan v. U. S. (9th Cir. 1929) 32 F.2d 992.

See also

Beard v. U. S. (C.A.D.C. 1936) 82 F.2d 837.

VIII. APPELLANTS WERE PROPERLY CHARGED WITH CONSPIRACY TO VIOLATE SECTION 2421 OF TITLE 18 UNITED STATES CODE, AND APPELLANT WAS PROPERLY CHARGED WITH A SUBSTANTIVE VIOLATION OF THAT SECTION.

Appellants Boyd and Bruno argue that the proper charge in this case should have been conspiracy to violate Section 2422 of Title 18 U.S.C., that is, conspiracy to persuade, induce, entice and coerce a woman to go from one place to another in interstate commerce for the purpose of prostitution, rather than conspiracy to violate Section 2421 of Title 18, U.S.C., that is, conspiracy to cause the transportation in interstate or foreign commerce of a woman for the purpose of prostitution. At the outset it must be emphasized that appellants Boyd and Bruno are not charged with the substantive crime of causing Bell to be transported in interstate commerce. They are charged only with conspiracy to cause the transportation of women in interstate commerce. If they agreed with Ege to cause

the transportation of women in interstate commerce, and anyone of them did any act to effect the object of that conspiracy, whether successful or not, they would be guilty of an offense. It is immaterial whether or not the conspiracy succeeds. Any party coming into a conspiracy at any stage of the proceedings with knowledge that an illegal scheme or conspiracy is in operation becomes, under the law, a party to and responsible for all acts done by any of the other parties either before or afterwards in furtherance of the common design. One who joins such a scheme or conspiracy adopts for himself and becomes responsible for all that proceeded, as well as what is done during his personal participation.

Levey v. United States (9th Cir.) 92 F.2d 688, 691;

United States v. Buckner, 108 F.2d 921, 930;

Robinson v. United States (9th Cir.) 33 F.2d 238, 240;

Marino v. United States (9th Cir.) 91 F.2d 691;

Interstate Circuit v. United States, 306 U.S. 208, 227;

Van Riper v. United States, 13 F.2d 961;

Roberts v. United States (9th Cir.) 248 F. 873, 880.

Appellants' argument, however, seems to be founded on the premise that in order to be guilty of causing a woman to be transported in interstate commerce for the purpose of prostitution, or conspiracy to so transport, the defendants must have personally transported

the woman. This is a misconception of the requirement of the statute. As was stated in *Wright v. U. S.* (8th Cir. 1949) 175 F.2d 384:

“We have no doubt that one who deliberately aids or deliberately brings about the interstate transportation of a woman for immoral purposes is as guilty of the offense of transporting her as though he had physically and personally carried her across the state line.”

Or see for example *Lawrence v. U. S.* (9th Cir. 1947) 162 F.2d 156, where someone else actually delivered the woman across the line, the defendant stating at the time, “He wasn’t supposed to drive across the state line.” In this case appellants Boyd and Bruno caused the transportation of Bell by providing employment for her. Just as a retail druggist causes the shipment of drugs in interstate commerce by ordering them from the manufacturer in another state, or a prize fight promoter causes a boxer to travel to his arena by providing him with a match, and just as a theatrical impresario causes actors to travel to his theatre when he provides a play in which they can appear, so Boyd and Bruno caused Bell to be transported in interstate commerce by providing the place in which she could offer her services.

In *Schrader v. U. S.* (8th Cir. 1948) 94 F.2d 926, a madam was prosecuted for causing a woman to be transported in interstate commerce for the purpose of prostitution. She provided the place of employment. The 8th Circuit held that she had effectively caused the transportation and affirmed the conviction.

In *Wagner v. U. S.* (5th Cir. 1948) 171 F.2d 354, 363, the same contention as here was made, that is to say, only an inducement and persuasion was involved and Section 2422 rather than 2421 was applicable. The court stated that it was clear that they not only induced and enticed the transportation of the woman, but that they made it attractive to her, thereby causing her to go. Ege arranged for Constance Marie Bell's job. Furthermore, on the transportation to Arizona, in which he is charged in the first count of the indictment, he provided the means for her travel. That is, he gave her \$50 to cover her expenses (Tr. 72). It was by means of this money that Bell made the trip. To be sure, Ege induced and persuaded Constance Marie Bell to go, but he did more than that. By his action her transportation was caused. Without Ege's activities as an "agent" Bell would not have had her place of employment in Delano nor in Arizona nor in Las Vegas. All his activities with respect to Bell were directed towards her employment as a prostitute and the transportation in part in interstate commerce, which was a necessary incident of her prostitution activities.

We believe that the evidence is sufficient to show that the defendants Boyd and Bruno were guilty of the substantive offenses of causing Bell to be transported in interstate commerce for the purpose of prostitution. They, however, were not charged with that. They were charged only with conspiracy of transportation. There is sufficient evidence from which the government could so find, even if it be concluded that Ege alone caused Bell's transportation. Once a conspiracy

is proven only one defendant need take an overt act in pursuance of its object for the crime to be complete.

**IX. THE COUNTS IN THE INDICTMENT NEED
NOT HAVE BEEN SEPARATED.**

Rule 8a of the Federal Rules of Criminal Procedure provides as follows:

“Two or more offenses may be charged in the same indictment or information in a separate count for each offense, if the offenses charged, whether felonies or misdemeanors, or both, are of the same or similar character, or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.”

Appellants contend that Ege's charge under count 1 should have been separated with their trial on the conspiracy count of the indictment. Appellant Bruno argues, at page 51 of his brief, that counts 1 and 2 should be severed because the testimony regarding Ege's early meetings with Bell were prior to the formation of the conspiracy, and not admissible against Boyd or Bruno, and prejudiced them. We take sharp issue with appellant's assumption that conversations and activities referred to were prior to the formation of the conspiracy. In our opinion the evidence clearly shows that they were part and parcel of the conspiracy. However, the evidence would have been admissible against Ege on the *conspiracy* count of the indictment in any event. Even if the severance desired by appellants had been granted Boyd and Bruno would be in no better position. The court instructed at page 350 of the transcript as follows:

“In this trial there have been instances when evidence was admitted which may properly be considered by you only against some of the defendants and not against others. And I shall now instruct you as to the manner in which you must do so.

You are not to consider any statement or statements made by one defendant out of the presence of another defendant as evidence against such defendant. Thus, for example, the statements made by Boyd in Scottsdale, Arizona, are not to be considered by you as against Ege and Bruno. Or are any conversations had between Ege and Boyd in San Francisco to be considered by you as evidence against the defendant Bruno. Nor are any activities of Bruno in Delano or Bakersfield to be considered by you as evidence against Ege or Boyd.

However, there is an exception to the rule that I have just given you. The law allowed the statement and admissions of one conspirator to be admitted against his fellow conspirator if the statement is made by one of them in furtherance of the conspiracy. Therefore, if and only if you first find that there was a conspiracy in existence at the time of the statement and that the statement was made by one of the conspirators in furtherance of the conspiracy, then you may [342] regard it as evidence against every other person whom you may have found to be a member of the conspiracy at the time of the statement.

For example, if you find that there was a conspiracy between Boyd and any other person or persons at the time of Boyd's statements in Scottsdale, Arizona, then you may consider anything said by Boyd which you believe to be in further-

ance of the conspiracy as evidence against every other person in the conspiracy. If you do not first find such a conspiracy, or if you do not find any statement made by one of the conspirators to be in furtherance of the conspiracy, then you may use the statement of any defendant as evidence only against him and not against the other defendants.”

Appellants could not ask for an instruction more fairly limiting the evidence against them to that which would properly be admissible against them. Under Rule 8 the counts in the indictment were properly joined since they referred in part at least to the same transaction. To have required the court to go through the expense and inconvenience of two trials in this case would have been ridiculous.

CONCLUSION.

Appellants have received a fair trial and were properly convicted. The judgments, and each of them, should be affirmed.

Dated, San Francisco, California,
August 27, 1956.

LLOYD H. BURKE,

United States Attorney,

RICHARD H. FOSTER,

Assistant United States Attorney,

Attorneys for Appellee.

(Appendix Follows.)

Appendix.

Appendix

INDICTMENT.

First Count. (Title 18, United States Code, Section 2421.)

The Grand Jury charges That:

Edward Raymond Ege, defendant herein, did on or about the 17th day of October, 1953, in the City and County of San Francisco, State and Northern District of California, knowingly transport in interstate commerce, to wit, from San Francisco, California, to Scottsdale, Arizona, a woman for the purpose of prostitution.

Second Count. (Title 18, United States Code, Section 371.)

The Grand Jury further charges:

That Edward Raymond Ege, Joseph Boyd, alias Joe Boyd, and Joseph Victor Bruno, at a time and place to the Grand Jury unknown, in violation of Title 18, United States Code, Section 371, did conspire together, and with other persons to the Grand Jury unknown, to commit an offense against the laws of the United States of America, in that they and each of them did conspire, in violation of Title 18, United States Code, Section 2421, knowingly to transport women between California and Arizona and California and Nevada for the purpose of prostitution.

Thereafter and during the existence of said conspiracy and in furtherance thereof and to effect the ob-

jects thereof, one or more of the said defendants, hereinafter mentioned by name, did the following acts.

Overt Acts.

1. In June, 1953, defendants Joseph Boyd, alias Joe Boyd, and Edward Raymond Ege, went to 2545 Noriega Street, San Francisco, California, State and Northern District of California.

2. In September, 1953, defendant Edward Raymond Ege, took one Constance Marie Bell from the Sarong Club, 875 Geary Street, City and County of San Francisco, State and Northern District of California, to 395 Monterey Boulevard of said City.

3. In September, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege had a conversation with Constance Marie Bell.

4. In October, 1953, defendant Edward Raymond Ege drove an automobile from Folsom, California, to 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California.

5. In October, 1953, at 395 Monterey Boulevard, City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege, gave the telephone number in Arizona of Defendant Joseph Boyd, alias Joe Boyd, to Constance Marie Bell.

6. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with defendant Joseph Boyd, alias Joe Boyd.

7. In October, 1953, defendant Joseph Boyd, alias Joe Boyd, drove Constance Marie Bell in an automobile from Phoenix, Arizona, to Scottsdale, Arizona.

8. In October, 1953, Constance Marie Bell in the State of Arizona had a telephone conversation with Edward Raymond Ege in the City and County of San Francisco, State and Northern District of California.

9. In October, 1953, defendant Joseph Victor Bruno drove Constance Marie Bell from Bakersfield, California, to Delano, California.

10. In October, 1953, in the City and County of San Francisco, State and Northern District of California, defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.

11. In October, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the County of Yolo, State of California.

12. In November, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City and County of San Francisco, State and Northern District of California, to the City of Barstow, State of California.

13. In November, 1953, in the City of Barstow, State of California, defendant Edward Raymond Ege took the sum of approximately \$900 from Constance Marie Bell.

14. In December, 1953, defendant Edward Raymond Ege drove Constance Marie Bell from the City

of Barstow, State of California, to the City of Las Vegas, State of Nevada.

A True Bill.

/s/ D. Gordon Tyndall,
Foreman.

BILL OF PARTICULARS

Comes now the United States of America, through its attorneys, Lloyd H. Burke, United States Attorney for the Northern District of California, and John P. Sparrow, Assistant United States Attorney, and gives particulars as to the following matters alleged in the indictment herein.

I.

First Count.

1. The name of the person described as "the woman" is Constance Marie Bell.

2. The woman referred to in the first count, namely, Constance Marie Bell, is one of the women referred to in the second count and the overt acts thereunder.

II.

Second Count.

1. Constance Marie Bell is one of the women whom the defendants conspired to transport between California and Arizona.

2. Constance Marie Bell is one of the women whom the defendants conspired to transport between California and Nevada.

3. The approximate day of the month on which each of the overt acts are alleged to have taken place is as follows:

- (1) On or about June 15, 1953.
- (2) On or about September 15, 1953.
- (3) On or about September 15, 1953.
- (4) On or about October 13, 1953.
- (5) On or about October 20, 1953.
- (6) On or about October 22, 1953.
- (7) On or about October 22, 1953.
- (8) On or about October 25, 1953.
- (9) On or about October 27, 1953.
- (10) On or about November 5, 1953.
- (11) On or about November 10, 1953.
- (12) On or about December 7, 1953.
- (13) On or about December 20, 1953.
- (14) On or about December 22, 1953.

Dated: August 4, 1955.

LLOYD H. BURKE,
United States Attorney,

/s/ JOHN P. SPARROW,
Assistant United States Attorney,
Attorneys for Plaintiff.

[Endorsed]: Filed August 4, 1955.

STATUTES INVOLVED.

Title 18 United States Code, Section 371.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 18 United States Code, Section 2421.

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or * * *

Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT JOSEPH BOYD'S CLOSING BRIEF.

LEO R. FRIEDMAN,

935 Russ Building, San Francisco 4, California,

Attorney for Appellant

Joseph Boyd.

FILE

SEP 20 19

PAUL P. O'BRIEN,

Subject Index

	Page
1. General comments on appellee's brief	1
2. Error in the court's failure to instruct that the jurors must all agree on one of the overt acts	4
3. Insufficiency of the evidence	8
(a) There is no legal corroboration of Boyd's admissions	14
(b) There is no competent evidence aliunde against Boyd	16
4. Events after Constance Bell left Arizona no part of conspiracy charged. It was error to admit such evidence..	17
Prejudicial effect of the evidence relative to all activities after Constance Marie Bell left Arizona	21

Table of Authorities Cited

Cases	Pages
Blumenthal v. United States, 332 U.S. 539	20
Bruno v. United States (9 Cir.), 67 F. 2d 416	6
Cramer v. United States, 325 U.S. 1	5
Direct Sales Co. v. United States, 319 U.S. 703	20
Egan v. United States (8 Cir.), 17 F. 2d 369	20
Kepl v. United States (9 Cir.), 299 F. 590	6
Krulewitch v. United States, 336 U.S. 440	21
Mutual Life Ins. Co. v. Hellman, 145 U.S. 285	14
Opper v. United States, 348 U.S. 84	10, 11, 14
Samuel v. United States (9 Cir.), 169 F. 2d 787	6, 18
Smith v. United States, 348 U.S. 147	9, 11
Stromberg v. California, 283 U.S. 359	6
Thomas v. United States (10 Cir.), 57 F. 2d 1039	20
Wolcher v. United States (9 Cir.), 233 F. 2d 748	13

Constitutions

United States Constitution, Article III, Section 3	5
--	---

Texts

Wigmore on Evidence, Volume VI:	
Section 1766	12
Sections 1770 to 1788	12
Section 1770	12
Section 1772	13
Section 1774	13
Section 1783	12
Section 1788	12

No. 14,955

IN THE

**United States Court of Appeals
For the Ninth Circuit**

EDWARD RAYMOND EGE, JOSEPH BOYD
and JOSEPH VICTOR BRUNO,

Appellants,

VS.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT JOSEPH BOYD'S CLOSING BRIEF.

1. GENERAL COMMENTS ON APPELLEE'S BRIEF.

This closing brief is directed only to those portions of appellee's brief that concern appellant Boyd.

Appellee, in discussing the evidence and its competency to establish the conspiracy charged and appellant's connection therewith, has not segregated the extrajudicial statements of alleged coconspirators from the admissions claimed to have been made by Boyd. On the contrary, appellee has used the extrajudicial acts and statements of Ege as the foundation for the admission in evidence of the claimed admissions by Boyd and then has used Boyd's admissions as the basis for the admission of the

extrajudicial acts and statements of Ege. This cannot be done. Incompetent evidence cannot be used as the basis for admitting other incompetent evidence and then using the incompetent evidence so admitted as justifying the admission in evidence of the first class of incompetent evidence.

Throughout the brief appellee stresses the fact that "He (Boyd) advertised girls from California (Tr. 212)". A reference to R. 212 shows that on one occasion he told Briley, whether in response to a question by Briley does not appear, that "two more girls were supposed to show up * * * they were coming from California".

On page 4, appellee states that "Boyd admittedly knew Bruno and the fact that Bruno operated a house of prostitution in Delano, California (Tr. 237, 245, 246)." Such is not the fact. On R. 236-7, Mr. Moe of the F.B.I. testified:

"Concerning Mr. Bruno, he stated he was remotely acquainted with Joe Bruno. He had heard rumors that Bruno operated a house of prostitution, but he thought that Bruno was too smart to be involved in such an operation."

The conversation between Boyd and Moe occurred in 1955, long after the alleged conspiracy had terminated (R. 231). The statements did not relate to Boyd's knowledge at all, let alone as to what he knew in 1953.

Appellee's references to Tr. 245-6 relate to a conversation between F.B.I. agent Andress and Boyd on June 23, 1955, after the indictment herein had been filed. The statements made by Boyd on this occasion were as to his

then present knowledge, nothing in Andress' testimony is to the effect that in 1953 Boyd knew of any activities of Bruno.

Appellee then states that Boyd "was also aware that Constance Marie Bell had gone to Delano, California, from his brothel in Scottsdale, Arizona (Tr. 245)". This statement is subject to the same criticism as the foregoing.

Appellee states on page 5: "The Monterey Boulevard property was utilized as a rendezvous for prostitutes sent from San Francisco to Scottsdale, Arizona, for work in the Boyd bordello (Tr. 71, 102)". The transcript references are to Constance Bell's testimony. She testified that after her first visit to Monterey Boulevard she remained there a week (R. 69), that she went to a house of prostitution in Folsom where she remained for a week; that she returned to Monterey Boulevard "where I stayed for awhile while they hunted for a job for me" (R. 70). "Ege finally said he had found a job for me in Phoenix." (R. 71). All this is far different than the Monterey Boulevard property being used as a rendezvous for girls to be sent to Arizona.

It must be noted that from the time the Bell woman left Arizona there is no evidence that Boyd had any contact with Constance Bell, Judy Berg, Ege or Bruno. Anything occurring from that time on relating to Bell, Judy, Ege or Bruno must necessarily have been after Boyd's alleged connection with the conspiracy charged had terminated.

2. ERROR IN THE COURT'S FAILURE TO INSTRUCT THAT THE JURORS MUST ALL AGREE ON ONE OF THE OVERT ACTS.

This is in reply to the points in appellee's brief that "A special verdict was unnecessary" and "The jury were instructed its verdict must be unanimous".

Appellee is in error in arguing that Boyd claims it was error for the trial court not to submit special verdicts to the jury on each of the alleged overt acts. Our contention is that it was error not to instruct the jury—especially when a request so to do was made—that the jurors must all agree on at least one of the overt acts having been committed in furtherance of the alleged conspiracy.

Our reference to the request for special verdicts was to emphasize the rulings made in the cases cited in our opening brief which in turn emphasized the fact that no guidance of any kind, by special verdict or otherwise, was given the jurors confining their findings to a unanimous agreement on at least one of the overt acts.

The crime of conspiracy consists of two main elements, viz.: An unlawful agreement and an overt act done to further the agreement. Proof of only one does not establish the commission of a crime.

It is fundamental that to support a verdict of guilt the jurors must be unanimous in finding that all essential elements of the crime existed and were proved. Thus, in a criminal conspiracy prosecution, the jurors must all agree that the unlawful agreement was entered into by the accused and that one or more of the particular overt acts charged was committed in furtherance of the conspiracy.

If the jurors did not agree on at least one of the overt acts having been so committed there can be unanimity of the jurors as to the commission of the crime charged.

If, from the record, it cannot be ascertained that the jurors did all agree on at least one of such overt acts, then the verdict of guilty cannot stand.

Here it cannot be ascertained which of the overt acts any jurors agreed upon. Some of the charged acts admittedly were not established by the evidence while acts 8 to 14 involved other defendants after Boyd had ceased to be a part of any conspiracy to transport women for purposes of prostitution (a matter hereafter argued at some length).

Appellee criticizes our reliance on the case of *Cramer v. United States*, 325 U.S. 1, and others, on the ground that the overt acts there charged (treason) differed in nature from the overt acts charged herewith. *An overt act is an overt act*, whether it be an act done to give aid and comfort to an enemy of the United States (*Cramer v. United States*, supra; *Constitution*, Article III, Section 3) or to further the objective of a conspiracy. In either event the jurors must all agree on at least one such overt act having been committed and the record must affirmatively establish such fact.

Of course, if there is only one overt act charged there can be no question but what the jurors all agreed on the essential elements of the crime; but where there are numerous acts charged, some of which are proven and others without proof, then there is no way of telling whether the jurors all agreed on any one particular act.

Even where several acts have been proved, in the absence of a proper instruction there is no way of telling whether the jurors all agreed on any one particular act so charged. As this confusion can only be avoided by the trial judge instructing the jurors that they must all agree on at least one of the pertinent overt acts, error occurs in the failure to so instruct.

Appellee cites the cases of *Kepl v. United States* (9 Cir.), 299 F. 590, and *Bruno v. United States* (9 Cir.), 67 F. 2d 416, as authority for a contrary ruling. These cases did not involve the refusal or failure of the trial judge to instruct the jurors they must all agree on at least one overt act. These cases merely held that where an accused is charged with several distinct acts, the doing of one or more constituting a single offense, it is not necessary for the Government to prove all the acts alleged and that proof of the doing of a lesser number will support a conviction.

The case of *Samuel v. United States* (9 Cir.), 169 F. 2d 787, is to the same effect. However, the *Samuel* case, as does the case of *Stromberg v. California*, 283 U.S. 359, points out the distinction between a case where the indictment in separate counts charges several distinct acts as constituting separate and distinct crimes, and where only one count is composed of the doing of several distinct things. In the latter cases it is held that the jurors must all agree on at least one of the acts charged and if it cannot be ascertained that such agreement occurred then the verdict is void.

Whether the indictment charges a conspiracy to violate two or more laws of the United States, or whether it

charges a conspiracy to violate one law followed by several alleged overt acts, the law remains the same. The jurors must all agree, in the first instance, that the conspiracy was to violate one or more of the laws and the evidence must support such conclusion; in the second instance, the jurors must all agree that at least one specific overt act was performed in furtherance of the conspiracy. In the first instance, where one of the crimes alleged to be an object of the conspiracy is nonexistent or not supported by the evidence, a general verdict of guilty must be set aside if it cannot be ascertained that the jurors did not convict as to such specific crime. In the second instance, where some of the overt acts were not established by the evidence or some were not done in furtherance of the conspiracy, then the verdict of guilt must be reversed where it cannot be ascertained that the jurors all agreed on the commission of at least one of the overt acts proved to have been done in furtherance of the conspiracy.

Appellee's argument is without merit that because the judge instructed the jurors they must arrive at a unanimous verdict this cured the error.

The jurors undoubtedly did all agree that Boyd was guilty; but whether they agreed according to law cannot be ascertained from the record. As there were 14 overt acts charged, each juror may have found that Boyd was guilty and no two jurors have agreed as to the commission of any one specific overt act in furtherance of the conspiracy. One or more jurors may have based the conclusion on an overt act not established or on an act not done in furtherance of the conspiracy. Neither this

Court nor anyone else can determine that the jurors all agreed on one specific overt act, or what overt acts or act any juror found to have been committed.

The failure to instruct that all jurors must agree on the commission of at least one overt act established by the evidence resulted in depriving appellant of a fair trial, and his conviction was procured without due process of law.

3. INSUFFICIENCY OF THE EVIDENCE.

In our opening brief (pp. 27 to 38) we argued that some reasons why the evidence was insufficient to establish the charge against Boyd was (1) that the extrajudicial acts and statements of Ege and Bruno could not be considered in the absence of independent proof of the conspiracy charged and Boyd's connection therewith, and (2) that the claimed admissions of Boyd were insufficient to establish the conspiracy charged in the absence of independent proof of the corpus delicti.

Appellee argues that the corpus delicti need not be established by independent proof before the admissions of a defendant are admissible in evidence; that independent proof of the truth of the admissions is all that is necessary, and that when such independent proof is supplied then the corpus delicti can be gathered from all evidence in the case, including the admissions of defendant.

However, this contention of appellee does not do away with the rule that the extrajudicial acts and declarations of a coconspirator cannot be used as evidence against

an accused unless and until the corpus delicti has been established by independent testimony. *In fact, appellee admits this proposition on page 25 of its brief*, and then seeks to establish the truth of the admissions—thus establishing the corpus delicti in part—by reference to such acts and declarations of the alleged coconspirators.

We know of no case, and appellee has cited none, holding that the extrajudicial acts and statements of a coconspirator not admissible or binding on the accused, in absence of proof of the conspiracy charged and accused's connection therewith, can be used for the purpose of establishing the truth of accused's admissions and thus establish the corpus delicti.

In *Smith v. United States*, 348 U.S. 147, cited by appellee, the Supreme Court states the question involved as follows:

“* * * whether it is sufficient if the corroboration merely fortifies the truth of the confession, without independently establishing the crime charged * * *” (p. 156).

The court answers this question as follows:

“All elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is the independent evidence to bolster the confession itself and thereby prove the offense ‘through’ the statements of the accused.”

Just before the foregoing statements, the Supreme Court states:

“It is agreed that the corroborative evidence does not have to prove the offense beyond a reasonable

doubt, or even by a preponderance, as long as there is *substantial independent evidence that the offense has been committed*, and the evidence as a whole proves beyond a reasonable doubt that defendant is guilty.” (*Italics ours.*)

Our contention was not that the independent evidence had to establish the corpus delicti beyond a reasonable doubt; but that there has to be some independent evidence establishing the crime itself.

Appellee quotes a short passage from the case of *Opper v. United States*, 348 U.S. 84, referring to admissions of the defendant, as follows:

“However, we think the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti.”

But, immediately following the foregoing the Supreme Court explains the same as follows:

“It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it *while also establishing independently the other necessary elements of the offense*. *Smith v. United States*, No. 52 this term (348 U.S. 147, * * *).” (*Italics ours.*)

Thus, if the defendant’s admissions were as to essential elements of the corpus delicti, it is necessary for the Government to introduce independent evidence establishing the truth of such admissions, that is, independent proof of such elements of the crime.

Mere independent corroboration of an admission that constitutes only one element of the corpus delicti is insufficient. In *Opper v. United States*, supra, the court holds:

“Turning to the instant case, it is clear that there was substantial independent evidence to establish directly the truthfulness of petitioner’s admission that he paid the government employee money. But this direct corroborative evidence tending to prove the truthfulness of petitioner’s statements would not establish a corpus delicti of the offense charged. Rather it tends to establish only one element of the offense—payment of money. *The Government therefore had to prove the other element of the corpus delicti—rendering of services by the government employee—entirely by independent evidence.*” (pp. 93-4). (*Italics ours.*)

Mere corroboration of admissions which do not involve elements of the corpus delicti are insufficient. Corroboration of an admission which merely establishes one element of the corpus delicti does not relieve the Government from producing independent evidence of the other elements thereof (*Opper v. United States*, supra, p. 91).

Neither the *Smith* case nor any other case holds that evidence incompetent in the absence of proof of the corpus delicti can be used to establish, in whole or in part, the corpus delicti.

Appellee then argues that the statements made by Boyd to bar owner Briley (Boyd’s interest in acquiring a house for prostitution, getting two girls from California, etc.) were statements made to effect the object of the conspiracy. Boyd was not indicted for operating or con-

spiring to operate a house of prostitution in Arizona or elsewhere. He was indicted for conspiring to transport women in interstate commerce for the purpose of prostitution.

Any statements made by Boyd to Briley were made only for the purpose of bringing business to the house of prostitution and not for the purpose of aiding in the transporting of any woman for immoral purposes from California.

Next, appellee argues that any statements made by Boyd to Briley were "verbal acts" that "may be proved without violation of the hearsay rule because the utterance is not offered to evidence the truth of the matter which may be asserted within it." (citing Wigmore on Evidence, Section 1770).

If Boyd's statements to Briley were not offered for the purpose of proving the truth of the matter asserted, then for what were they offered? *The appellee repeatedly uses these statements to prove the truth of the utterances.* If the utterances do not evidence the truth of the statements, then the statements that Boyd expected two women to come from California etc. do not prove and cannot be used to prove such fact.

Wigmore on Evidence discusses "verbal acts" at length in Volume VI, Sections 1770 to 1788. We summarize these sections:

Extrajudicial utterances cannot be used to establish the fact asserted (Sections 1766 and 1788).

The declaration must be *contemporaneous with the act*. Anything said before or after the act is not receivable in evidence (Section 1783).

The conduct to be characterized by the words must be *independently material to the issue* (Section 1772).

The conduct must be *equivocal*. Where the act is unequivocal it furnishes no ground for the admission in evidence of the verbal act accompanying the same (Sections 1772, 1774) .

The words must accompany the conduct and aid in *giving legal significance to the conduct* (Section 1772).

In *Wolcher v. United States* (9 Cir.), 233 F. 2d 748, this Court discusses the foregoing sections of the text as follows:

“Statements constituting verbal acts or verbal portions of acts are admissible only where the fact the statement was made is the significant matter sought to be proved. Here, however, the attempt would be to introduce Corriston’s testimony as to Gersh’s statement to establish the truth of what Gersh said, which purpose is not within the *res gestae* exception.”

Here, Boyd was performing no act, either equivocal or unequivocal, material to the charge; therefore, his utterances did not explain or give legal significance to anything. The statement, if made, that he expected two girls from California did not constitute any proof that girls were coming from California or that Boyd had anything to do with girls coming from California.

Appellee then argues that Boyd’s statements were admissible as declarations of present intention to import prostitutes from California. Admitting that under some circumstances evidence of intention is admissible, this rule does not open the door for all statements made by an

accused. Here, the statements made by Boyd according to Briley were:

“Q. Would you state what he said, in substance, what he said to you with reference to that?

A. Well, there was two more girls supposed to show up.

Q. Did he state from where?

* * * * *

A. As I recall, they were coming from California.” (R. 212.)

An unequivocal statement that a person is going to do something is evidence, when such fact is in dispute, tending to prove that such person thereafter did such thing (*Mutual Life Ins. Co. v. Hellman*, 145 U.S. 285); but here we have no such statement. Boyd did not say he was bringing or intended to bring two girls from California, or that he had arranged for two girls to come from California, or anything like such statements. All that can be attributed to Boyd’s utterances is that he “supposed” two girls intended to come from California. This was an expression of someone else’s intention, not Boyd’s.

(a) There is no legal corroboration of Boyd’s admissions.

Mere corroboration of immaterial statements or admissions made by accused does not satisfy the law as to the probative effect of all admissions made. The corroboration, sufficient to establish the truth of the admissions and thus warrant their admission in evidence, *must be as to facts material to the charge and showing essential elements of the crime* (*Opper v. United States*, *supra*, at p. 91). Thus, corroboration of immaterial matters in a statement or confession of the accused does not establish the truthfulness of other portions thereof.

Appellee argues (p. 26) that certain statements by Boyd were corroborated, but an inspection of the record proves the contrary. These claimed corroborated circumstances are as follows: (1) Boyd admitted he operated a house of prostitution in Scottsdale and that Bell and Berg worked there. This stands admitted in the record. (2) That Boyd knew Bruno operated a house in Delano, California, and that Bell worked there. As pointed out above, Boyd's statements in this regard were as to rumors he had heard and which he disbelieved; these statements were as to Boyd's knowledge in 1955, two years after the alleged conspiracy had terminated. (3) Boyd admitted telephone conversations with Ege while Boyd was in Arizona and Ege in California. There is no evidence as to what these phone conversations were about or that they had anything to do with Bell and Berg coming to Arizona from California. (4) That Boyd advertised to Briley that two prostitutes were coming from California. This we have answered above with quotations from the record. (5) That Bell and Berg did come from California to Arizona to practice prostitution in Boyd's house. There is no evidence to establish that these women traveled from one to the other state as the result of any agreement or procurement on the part of Boyd. (6) That the transfer of the lease on the house on Monterey Boulevard established that this house was a rendezvous for prostitutes to be transported to Arizona. This has already been discussed.

The corpus delicti of this charge is the unlawful agreement between the appellants to transport women for the prohibited purpose. There is no evidence of any such agreement, and there is *no admission of Boyd even tend-*

ing to establish such agreement or any essential element thereof.

(b) There is no competent evidence aliunde against Boyd.

Appellee seeks to supply the evidence aliunde by recourse to acts of Ege prior to Constance Bell and Judy Berg coming to Arizona and acts between Bell, Ege and Bruno after Bell left Arizona. In doing so, *appellee has not attempted to differentiate between evidence affecting Ege and Bruno and that which might affect Boyd.* Before testimony as to any act or declaration of either Ege or Bruno is admissible against Boyd there must be evidence aliunde establishing the conspiracy and Boyd's connection therewith (see Boyd's Op. Br., pp. 28-31).

Ege's persuasion of Constance Bell to enter a life of prostitution, to live at the Monterey Boulevard house, to go to Folsom to practice prostitution and to give her money to Ege is not evidence of any conspiracy to transport her or any other woman to Arizona for purposes of prostitution. The evidence shows that after Bell came back from Folsom a week elapsed during which Ege was attempting to find "work" for her. There is no evidence that this search for work ended in any agreement between Ege and Boyd. The effect of Bell's, Ege's and Bruno's activities after Bell left Arizona will be discussed under the next heading.

4. **EVENTS AFTER CONSTANCE BELL LEFT ARIZONA NO PART OF CONSPIRACY CHARGED. IT WAS ERROR TO ADMIT SUCH EVIDENCE.**

Great reliance is placed by appellee on the testimony of Constance Marie Bell as to things occurring after she left Arizona. This evidence was most prejudicial to Boyd and it cannot be used to establish the independent testimony necessary to support the charge or make the extrajudicial acts and declarations of Ege or Bruno admissible against Boyd.

After Bell arrived in Arizona she received a telephone call from Ege suggesting that she fly to Delano, California, that Delano was open, that on arriving in California she was to phone Bruno, that Bruno picked her up in Bakersfield and drove her to Delano where she worked in Bruno's house and Bruno would count the money (R. 77-79); that from Delano she went to Fresno where Ege picked her up and they went back to San Francisco, then to houses of prostitution in Sacramento and Isleton (R. 81); that she gave the money she earned to Ege; that Ege sent her to a place outside Barstow, etc., that she was arrested and after that Ege drove her to Las Vegas, Nevada, where she broke off with Ege (R. 91).

The foregoing matters are set forth in the indictment as Overt Acts Nos. 8, 9, 10, 11, 12 and 14 (R. 5-6).

As these events were not part of any conspiracy to which Boyd was a party, it was error to admit such testimony in evidence against Boyd, and these acts did not constitute any overt acts in furtherance of any conspiracy of which Boyd then was a member.

There is no evidence in the record establishing any of the following things: (1) That Boyd knew anything about any telephone call from Ege to Bell; (2) That Boyd had anything to do with Bell leaving Arizona; (3) That Boyd had anything to do with Bell going to Delano or Fresno or Sacramento or Isleton, or any other place in California to practice prostitution; (4) That Boyd had anything to do with Bell giving her earnings to Ege; (5) That Boyd had anything to do with Bruno driving Bell from Bakersfield to Delano, or that Boyd had anything to do with Bruno's operation of a house of prostitution; and (6) That Boyd had anything to do with Ege driving Bell to Las Vegas; or (7) That Boyd knew any of such things.

Furthermore, there is no evidence that Boyd participated in or received any of the earnings of Constance Bell after she left Scottsdale, Arizona. This fact is of great importance. As said by this Court in *Samuel v. United States* (9 Cir.), 169 F. 2d 787, in conspiracy cases of this and similar types the purpose of making illegal gains and profits is of the utmost importance in establishing the charge, and the absence of such illegal profits is a strong indication that no such conspiracy existed.

Assuming, merely for purposes of argument, that Boyd was instrumental in having Bell and Berg come from California to work in his house of prostitution in Arizona, this does not establish that he was any party to Bell going back to California and working for Ege in houses of prostitution. Boyd had nothing to do with Bell leaving Arizona and knew nothing of what her future activities would be.

Appellee argues as follows on page 13 of its brief:

“In the case before this Court, appellant Bruno must have known that he was acquiring the services of one who had worked at brothels before and who would be employed by brothels other than his own in the future. The evidence at the trial indicated that prostitutes are engaged in the same kind of ‘here today and gone tomorrow’ business as those who, in days past, entertained on the vaudeville circuits. Bell, herself, was at many houses in the few months covered by the indictment. Boyd knew when Bell left his place that she would go somewhere else, most probably to a place selected by her California residing ‘pimp’. He also knew that if she continued to engage in prostitution business she would probably work at his house again. Bell was launched by Ege on the prostitution circuit. Each individual brothel owner, while playing his own special part in the scheme to transport prostitutes in interstate commerce, would of necessity know that other brothel owners would be involved, each playing a part in the conspiracy similar to his own but in different places and at different times.”

The foregoing argument demonstrates the fallacy of appellee’s contentions, as does appellee’s statement on page 15

“That it should be observed, however, that the victim in this case was a prostitute traveling on a prostitution circuit. Two of the places she stopped on the the way were Boyd’s and Bruno’s brothels. In fact, she traveled from one to the other.”

Adopting appellee’s analogy of the actor traveling on a vaudeville circuit, we find that each theater operator

would know that when the actor left his theater he was going to appear at another theater in another place. Would this make the first theater owner a conspirator with the second? Certainly not. Take this example: A man hires a known safe robber to rob a safe, the robber leaves and in another city is hired by someone else to rob another safe. The first hirer, knowing the man to be a safe robber, knew that he probably would go to another city and there rob another safe at someone's instigation. Does this make the two men hiring the robber conspirators? Certainly not.

It requires more than knowledge that one is going to commit a crime before guilt can be fastened on him. Knowledge alone is not enough to make one a conspirator; knowledge and acquiescence are insufficient; it requires knowledge, acquiescence and active cooperation to make one a coconspirator (*Egan v. United States* (8 Cir.), 17 F. 2d 369, 378; *Direct Sales Co. v. United States*, 319 U.S. 703; *Thomas v. United States* (10 Cir.), 57 F. 2d 1039).

Where in this record is there anything to show that Boyd had anything to do with Bell leaving Arizona for California, or working in Bruno's house, or going any of the other places in California, or going from California to Las Vegas? There is no such evidence.

Everything done by Bell, Ege and Bruno, after Bell left Scottsdale, were the independent acts of Bell, Ege and Bruno, outside of any conspiracy charged or established against Boyd.

Appellee relies on the decision in *Blumenthal v. United States*, 332 U.S. 539; but the facts therein do not support

appellee's contention; these facts are stated by the Supreme Court in footnotes 13 and 14 to the decision, to which we refer this Court.

When Constance Bell came to Scottsdale, Arizona, any connection of Boyd with the alleged conspiracy—assuming that he may have been a part thereof up to such time—terminated. When Constance Bell left Arizona and returned to California, all thereafter done was no part of any conspiracy to which Boyd was a member (Cf. *Krulewitch v. United States*, 336 U.S. 440).

Prejudicial effect of the evidence relative to all activities after Constance Marie Bell left Arizona.

The prejudicial effect on Boyd as to the admission in evidence of all the things done in California after Constance Marie Bell left Arizona is twofold.

(1) These matters are set forth as overt acts 8 to 14 in the indictment. None of these things were acts done in furtherance of any conspiracy to which Boyd was then a member. The failure of the court to instruct that all jurors must agree on at least one overt act done in furtherance of the conspiracy as to Boyd allowed some if not all the jurors to find a verdict of guilty on evidence not pertinent to the charge. It cannot be ascertained whether or not some jurors based their joining in the verdict solely because they found the overt acts to be one or more of these things occurring after Boyd's alleged membership in the conspiracy had terminated.

(2) As these matters were not chargeable to Boyd, the prejudicial effect of this incompetent evidence cannot be overemphasized. The same use thereof was made by the

prosecutor in arguing to the jury as had been made by appellee in its brief. Nothing could have been more erroneous and prejudicial.

All events happening after Bell left Arizona constituted a separate and distinct conspiracy of which Boyd was not a member and the admission of such evidence was reversible error (see cases cited in Boyd's Op. Br., pp. 37-8).

Dated, San Francisco, California,
September 21, 1956.

Respectfully submitted,

LEO R. FRIEDMAN,

Attorney for Appellant

Joseph Boyd.

No. 14955

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EDWARD RAYMOND EGE, JOSEPH BOYD and JOSEPH
VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the
Northern District of California, Southern Division.

Answering Brief for Appellant, Joseph Victor Bruno.

LILLIE & BRYANT, and

WALTER M. CAMPBELL,

668 South Bonnie Brae Street,

Los Angeles 57, California,

Attorneys for Appellant, Joseph Victor Bruno.

FILED

ROBERT B. McMILLAN,

Of Counsel.

SEP 28 1956

PAUL P. O'BRIEN, CLERK

TOPICAL INDEX

	PAGE
A. The Evidence	1
B. The Sufficiency of the Evidence.....	3
C. Jurisdiction of the Trial Court.....	9
Conclusion	20

TABLE OF AUTHORITIES CITED

CASES	PAGE
Glasser v. United States, 315 U. S. 60, 62 S. Ct. 457.....	7
Krulevich v. United States, 336 U. S. 440.....	20
LaPage v. United States, 146 F. 2d 536.....	8
Lee v. United States, 106 F. 2d 906.....	4, 5, 9
Schrader v. United States, 94 F. 2d 926.....	8
United States v. United States Gypsum Co., 67 Fed. Supp. 397	7
Wagner v. United States, 171 F. 2d 354.....	8
STATUTE	
United States Code, Title 18, Sec. 2421.....	8
United States Code, Title 18, Sec. 2422.....	7

No. 14955
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

EDWARD RAYMOND EGE, JOSEPH BOYD and JOSEPH
VICTOR BRUNO,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the
Northern District of California, Southern Division.

Answering Brief for Appellant, Joseph Victor Bruno.

For the purpose of this reply brief, we shall confine ourselves to the answering of those statements and arguments of Government counsel which have a bearing on the appeal of Joseph Bruno, leaving to other counsel to answer for their respective clients. The fact that arguments or points set forth in the opening brief in behalf of Bruno are not repeated or referred to herein should not be taken as an indication that they, or any of them, are abandoned.

It is our belief that the appeal of Bruno should be separately considered from that of his alleged co-conspirators, and that the evidence, and the inferences to be drawn therefrom, as they affect Bruno are readily severable. We also believe that the situation in which Bruno finds himself is unique, in that at least so far as direct evidence is concerned, he never knew, saw, or communi-

cated with his alleged co-conspirators during the period of the alleged conspiracy. There is no evidence that the names or even the identity or existence of his alleged co-conspirators were ever communicated to Bruno or mentioned in his presence. We are aware of a number of reported cases wherein convictions have been upheld in which a multiplicity of conspirators were involved and each conspirator did not know or have contact with *all* of the remainder. However, we have not uncovered a case where one alleged conspirator was not shown to have known or had direct contact with *any* of his alleged co-conspirators.

(A) The Evidence.

We wish to take sharp issue with the Government's statement of the evidence, and of the inferences to be drawn therefrom. We have carefully re-read the entire record, compared it with our opening brief, and will stand upon our statements summarizing the evidence (Bruno Op. Br. 9-16) and referred to throughout the opening brief. Although the temptation exists to compare counsel's statements one by one with the record, this would serve no useful purpose in view of our knowledge that this Honorable Court invariably examines the entire record on appeal with care. We realize, of course, that legitimate argument permits counsel on either side to draw inferences from the record to support his side, but feel that when a statement is attributed to the record, then it should be carefully worded to speak with reasonable exactness what the record actually contains. With this thought in mind, we shall only comment on Government's statements purporting to recite evidence as such statements may be involved in the argument herein.

However, it should be pointed out that counsel for the Government has leveled the serious charge that the undersigned has "neglected to read the record carefully" (Gov.

Br. 36) and is guilty of a "complete distortion" of the record (Gov. Br. 40). Possibly the validity of this challenge can be tested by examining it in its context. For example, the Government states:

" . . . It may be suggested that counsel neglected to read the record carefully. Mr. Giomi whose market was at 2545 Noriega Street testified that he was introduced to Mr. Ege by Mr. Boyd and that Mr. Ege took over the obligation of Mr. Boyd on the house at Monterey Boulevard which was used as a rendezvous for prostitutes [Tr. 196]" (Gov. Br. 36).

A careful reading of page 196 of the Transcript of Record, and, indeed, of the entire testimony of Giomi does not disclose that he testified that the house on Monterey Boulevard was used by prostitutes as a rendezvous, or otherwise, or for any illegal purpose of any kind. The incongruity of counsel's accusation would be amusing, were it not that a man's liberty is at stake.

(B) The Sufficiency of the Evidence.

So far at least as Bruno is concerned, and in the absence of any direct evidence, the Government's argument as reiterated throughout its brief seems to be as follows:

(1) Prostitution employment is of a transient nature (Gov. Br. 32);

(2) The victim in this case was a prostitute traveling on a prostitution circuit (Gov. Br. 15);

(3) A brothel owner knows that a prostitute employed by him must necessarily have worked at brothels before and would be employed at other brothels in the future (Gov. Br. 13);

(4) An experienced brothel owner would know that a prostitute would be shipped from place to place in accord-

ance with the demand in various localities for prostitutes (Gov. Br. 32);

(5) A brothel owner cannot close his eyes to the possibility that the prostitutes might come from out of state (Gov. Br. 33);

(6) If, in fact, the prostitute travels in interstate commerce, the brothel owner, by providing employment, has become a party to her transportation, along with other brothel owners who may have employed her (Gov. Br. 42-43).

The foregoing, although not in the exact language used, is the gist of the Government's argument, and appear to be the basic premises upon which they would make Bruno a co-conspirator with Ege and Boyd, with whom, according to the evidence against him, he had never had any contacts.

This concept flouts the basic principles of what constitutes a conspiracy: the agreement, *i. e.* the meeting of the minds in an understanding way to accomplish the common purpose. It is directly opposed to the decision of this Honorable Court in the case of *Lee v. United States* (C. A. 9), 106 F. 2d 906, referred to in this appellant's opening brief, and attempted to be distinguished by the Government (Gov. Br. 30-31).

In the *Lee* case, the "victim", who was a practicing prostitute in Portland, Oregon, was transported in interstate commerce to Seattle, Washington, by one Green and Purvis, where she went to work as a prostitute in the brothel of Green. The appellant met her at this house, and she moved in with him on August 15, giving him the money which she made. In the latter part of September, appellant took her to Portland, Oregon for immoral purposes. Appellant and five others were convicted of conspiracy to violate the White Slave Traffic Act. One of the overt acts alleged was that appellant transported the "victim" from Seattle to Portland. This Court re-

versed the conviction on the grounds that "there is no evidence to show that when he committed the overt acts he had knowledge of such a conspiracy."

If the Government's argument in the instant case be accepted, then the finding in the *Lee* case must be rejected for, under the same reasoning, Lee, being experienced in the prostitution trade as one accepting the earnings of a prostitute, whom he knew to be such, was familiar with her traveling from place to place, including in interstate commerce, and therefore was a co-conspirator with the brothel owners in Seattle as to her past and future interstate transportations.

The fact that Lee took the stand and denied knowledge of her transportation from Portland to Seattle does not distinguish the cases. In this case, there is nothing in the record (which is not nearly so strong as that in the *Lee* case, since Lee picked up the girl at the Seattle house, and actually transported her to another state) from which it might be inferred that Bruno had specific or any knowledge of Bell's interstate transportation to Arizona, nor her travel from Arizona immediately preceding his meeting her.

Government counsel attempts to overcome this situation by a rather specious argument. He states:

"Here the circumstances were such that it was extremely unlikely that Bruno was under any misapprehension as to Bell's place of origin. In any event, however, Bruno did not raise this issue at the trial. If Ege or Bell told him that she traveled only in California appellant Bruno did not choose to place this evidence in the record. The jury did not require to make an inference not supplied to it by the evidence. The fact was that Bell came from Arizona. There is no evidence that Bell or Ege made any concealment of that fact. The jury, therefore, was not required to find that they did so" (Gov. Br. 31).

In the first place, Bruno certainly did raise this issue at the trial. His plea of "not guilty" put in issue every material element required to support the indictment. This matter remained at issue throughout the trial. This rule is so fundamental to our system of jurisprudence as to not require the citation of authority. And, too, a standard which only prescribes circumstances making lack of essential knowledge "unlikely" is violative of the doctrines of reasonable doubt and the burden of proof.

In the second place, neither Ege nor Bell claimed to have told Bruno anything about Bell's travels. Bell, who testified fully about her contacts with Bruno, either failed or avoided mentioning to him that she had come from Arizona, or anything else about her previous experiences or contacts. Since she was the complaining witness, and was produced by the Government, we are entitled to believe that she testified on all relevant matters in her knowledge. Ege denied ever knowing, seeing, or talking to Bruno [R. 288-289, 308]. Thus, there was no evidence of either revelation or concealment by Ege or Bell of Bell's trip to or from Arizona, *since the matter was never discussed with Bruno*. Hence, the jury was not only not required to make a finding that Bell or Ege made a concealment of the fact that Bell came from Arizona, but *they could not justifiably make a finding that such fact was in the knowledge of Bruno*. And without such finding, their verdict cannot stand. Nothing would have been added had Bruno taken the stand and confirmed the evidence of Bell and Ege in this respect.

To meet this obvious collapse of its case against Bruno, the Government seeks to rely upon the alleged telephone call from Ege to Bell as raising an inference of a previous agreement between Ege and Bruno of a nature which would inform Bruno of the existence of a conspiracy involving Ege and others (presumably Boyd), and Bruno then joining and becoming a part of the pre-existing conspiracy (Gov. Br. 34-35).

In the first place, the alleged conversation between Ege and Bell was outside the presence of Bruno, and cannot be used to establish his connection with the conspiracy. See cases heretofore cited (Bruno Op. Br. 22-23), including *Glasser v. United States*, 315 U. S. 60, 62 Sup. Ct. 457, and the very exhaustive collection of authorities by a three judge Court in *United States v. United States Gypsum Co.* (D. C. D. C.), 67 Fed. Supp. 397.

Secondly, even if the conversation of Ege and Bell be considered, what is there in it of an incriminating nature so far as the instant indictment is involved? Ege's statement to Bell was simply that Delano was opening up, and that she should fly there because there was a shortage of girls; that she was to purchase her ticket from the money which she had made at Scottsdale; that when she arrived in Los Angeles she was to call a certain number in Delano, which was that of Joe Bruno and advise of when her plane would arrive at Bakersfield [R. 76-78]. The inference is clear that Ege did not want the person answering the telephone in Delano to know that Bell had started her trip in Arizona, or why the precaution of warning her to phone from Los Angeles as to her time of arrival at Bakersfield? Since she purchased her own transportation, she would know the time of arrival at Bakersfield before leaving Arizona. As pointed out in our opening brief, the nature of the phone call and the place of its reception clearly infer that Boyd was not to be consulted or advised concerning it.

Thus, assuming for the sake of argument only that the telephone conversation of Ege and Bell can be considered against Bruno, we come to another basic proposition: the nature of Bell's trip from Arizona. In persuading and inducing Bell to travel from Arizona to California for the purpose of indulging in prostitution, if true, Ege committed the offense denounced by Section 2422, Title 18, United States Code, and not Section

2421 thereof, to which the instant indictment is limited. The distinctions between the two sections are clearly delimited by the cases cited in our opening brief (Bruno Br. 24-26); and particularly in *LaPage v. United States* (C. A. 8), 146 F. 2d 536. Counsel for the Government (Gov. Br. 56) cites the case of *Schrader v. United States* (C. A. 8), 94 F. 2d 926, as being to the contrary. However, in the *LaPage* case, *supra*, the same Court discusses and distinguishes the *Schrader* case and indicates that if the same point had been raised in the earlier case a different result would have ensued. Government counsel also refers to *Wagner v. United States* (C. A. 5), 171 F. 2d 354. In *Wagner*, the Court of Appeals approves the holding of the *LaPage* case, *supra*, but points out that under certain circumstances (not relevant here) a defendant can violate both sections with regard to a single act of transportation.

Again, assuming for the sake of argument, that a prior communication had been had between Ege and Bruno, it certainly cannot be inferred that such communication would go beyond the events which actually occurred: to wit, that Constance Marie Bell would telephone Bruno from Los Angeles and would fly into Bakersfield where she could be met and taken to the house of prostitution at Delano. While the Government would like to infer that Ege had given at least an inculpatory description of what had transpired among himself, Boyd and Bell prior to that time, such a disclosure was not only highly improbable but would have served no purpose whatsoever. Not being a reasonably necessary incident to any pre-arrangement, it cannot be inferred.

Such acts as Bruno was shown to have performed did not require any knowledge of a conspiracy, and hence such knowledge cannot be inferred from those acts. Even the acts and statements of his alleged co-conspirators do not indicate any knowledge by Bruno of a conspiracy

to transport women in interstate commerce for immoral purposes. As stated in *Lee v. United States, supra*:

“ . . . While one ‘who commits an overt act with knowledge of the conspiracy is guilty’, he ‘must know the purpose of the conspiracy, however, otherwise he is not guilty.’ *Marino v. United States*, 9 Cir., 91 F. 2d 691, 696, 113 A. L. R. 975, certiorari denied, 302 U. S. 764, 58 S. Ct. 410, 82 L. Ed. 593. See also *Craig v. United States*, 9 Cir., 81 F. 2d 816, 822, certiorari denied 298 U. S. 690, 56 S. Ct. 959, 80 L. Ed. 1408.”

(C) Jurisdiction of the Trial Court.

In his opening brief Bruno contended that the Trial Court was without jurisdiction to enter judgment or impose sentence upon him for the reason that none of the overt acts alleged in the indictment were shown to have taken place in the Northern District of California, the venue of the indictment (Bruno Br. 28-39). In answer to this, the Government contends that Overt Acts 1, 2, 3, 4, 5, 8 and 10 were proven as taking place in the Northern District of California (Gov. Br. 35-43):

Certain elements are essential for an alleged overt act to have probative value. They are:

(1) It must be proved:

(2) It must have occurred during the existence, that is, after the formation, of the alleged conspiracy;

(3) It must have been of a nature and intended to effect the objects of the conspiracy;

(4) If it involves the jurisdictional element, then it must be proved to have taken place within the venue of the trial court.

In determining whether or not any given alleged overt act meets these requirements, it should first be determined when, under the evidence, a conspiracy among any two

of the defendants occurred. In the absence of direct proof, we must look to circumstantial evidence for the answer to this question. For the purpose of the argument on this point we shall refer to all the evidence in the case, leaving aside the questions of admissibility.

It should be borne in mind that the conspiracy claimed by the Government in the instant case involved but one woman: Constance Marie Bell. All of the proof revolved about her and her activities. A conspiracy to transport her in interstate commerce for the purpose of prostitution could hardly have been formed prior to her advent on the scene. According to her testimony she first met Ege in August or September, and neither Boyd nor Bruno until at least October, 1953. After conversation with Ege, she decided to become a prostitute, and worked for awhile at his establishment at Folsom, California. After returning from there, efforts were apparently made to obtain work as a prostitute in and around San Francisco, without results, but finally Ege or Bell found the job in Phoenix (Scottsdale), Arizona [R. 70-71]. This last is the first circumstance which would indicate a plan or scheme on the part of anyone to send or transport Bell in interstate commerce. It is the first time that there could have possibly been, under the evidence, a "meeting of the minds in an understanding way" to accomplish the purpose of the alleged conspiracy.

In support of this, the following facts in evidence become pertinent: (1) Boyd arrived in Phoenix about September 20, 1953 [R. 204] allegedly for the purpose of setting up gambling games [R. 234]; during the first week of October, he visited Scottsdale, Arizona, and inquired about houses to rent [R. 210]; on October 6, 1953, he leased the house of Ellingson at Scottsdale, and was privileged to occupy it the next day [R. 202-203]; Boyd contacted Judy Berg and talked to her about working at Scottsdale [R. 244]; in San Francisco, Berg informed Ege and Bell that she (Berg) was going to

Phoenix to work and had the address (presumably Boyd's) [R. 272-273]; Ege told Bell she could go down to Phoenix with Berg, and provided Bell with funds to share expenses on the trip [R. 71-72]; Ege and Boyd talked by telephone [R. 244]. Boyd stated he had two girls coming from California [R. 212]. In stating the foregoing, we have confined ourselves to the Government's witnesses, and ignored the flat denials of Ege.

The above constitute the first circumstances under which an inference of the meeting of the minds of anyone, or the consummating of acts looking to a joint result, could possibly arise. Of necessity, and in fact, they occurred at a time subsequent to the events attempted to be described in Overt Acts 1, 2, 3 and 4. Thus, even if proved, Overt Acts 1, 2, 3 and 4 fail to measure up to two requirements: (1) occurring during the existence of the alleged conspiracy, and (2) of a nature and intending to effect the objects of the conspiracy.

(1) Overt Act 1.

In stating that no evidence was offered as to Overt Act 1, counsel for Bruno relied on the record as it existed at the time the Government rested its case, and Bruno rested his case [R. 281-283, 332], under the belief that Bruno is neither bound by nor can accept the benefits of subsequently received evidence in the case of an alleged co-conspirator (Bruno Br. 52). The Government in its brief has taken the contrary position, for which reason we have heretofore in this reply brief referred to Ege's testimony that he had never seen, nor talked to Bruno. However, we are still of the opinion as expressed in our opening brief. To hold otherwise would deprive a defendant of his right to rely upon a believed insufficiency of the Government's proof to establish a case against him.

Be that as it may, the quoted portion of Ege's testimony (Gov. Br. 36) is not of material assistance to the

Government, as Ege obviously did not know if they had been to the Noriega address or to one of the other stores operated by Giomi. Giomi testified that at the time in question he operated a market at 1630 Ocean Avenue [R. 197-198].

The indictment alleged an event which occurred in June, 1953. The bill of particulars placed it as "on or about June 15." The event described was simply that Boyd and Ege went to a certain address on that date.

The Government now contends that this overt act refers to an occasion in May, when Ege took over Boyd's lease on the premises at 395 Monterey Boulevard. But there is nothing in the indictment or bill of particulars to identify that to be the occasion.

We agree that the general rule is that the exact date on which a crime is committed is not a requirement, and that proof of another day is admissible. But such rule applies to identifiable events.

The Government was not taken by surprise here. Giomi produced and utilized a memorandum of his records, and the day of the taking over of the lease was an exact one.

If this were an isolated instance of a "mistaken" date or event, it would be understandable. But when, as pointed out in our opening brief, known and proveable dates were disregarded, and repudiated acts were included in the indictment, we believe the problem raised is a serious one.

(2) Overt Act 2.

Overt Act 2 alleges that Ege "took one Constance Marie Bell" to "395 Monterey Boulevard" allegedly "on or about September 15".

An overt act is necessarily an active, not a passive one, to meet the requirements of law. The act complained of here is the act of *taking* Bell to the address described.

As previously indicated, there is no proof of the *taking*, but on the contrary the evidence indicates that Bell and her friends Rosalie went to that address after their afternoon meeting with Ege, of their own accord. There is nothing in the record to indicate that Ege accompanied them on the trip.

(3) Overt Act 4.

Overt Act 4 relates that in October, 1953, Ege drove an automobile from Folsom, California to San Francisco, California. In the bill of particulars, it is stated that this occurred "on or about October 15".

Counsel for the Government now contends that this refers to an occasion when Ege drove Bell from Folsom to San Francisco, an event which Bell places as occurring prior to September 15, 1953 [R. 172].

Even under liberalized pleading procedures a defendant is entitled to be given some conception of his alleged acts which are complained of. The desire of the pleader to take full advantage of the rules which make a seemingly innocuous occurrence such as driving an automobile between two cities a possible allegation as an overt act in carrying out a conspiracy, should not permit the pleader to so avoid describing the event that even though it might have occurred on a different date that there could be no doubt as to what reference had been made.

It is the constant repetition of this type of "mistake" that has lead this appellant to question the drafting of the indictment and the furnishing of the bill of particulars.

(4) Overt Act 5.

Government counsel apparently concedes the failure of proof as to this overt act. He states (Gov. Br. 40):

"As far as overt act 5 is concerned it appears that Judy Berg rather than Constance Marie Bell actually

recorded the number of the defendant Joseph Boyd [Tr. 173]. She was told, however, by Ege to telephone Boyd [Tr. 173]. Overt act 5 was only important insofar as it involved an act by Ege calculated to bring together the prostitutes Bell and Berg with the brothel owner Boyd. There is no doubt but that his supplying the telephone number to the girls actually resulted in a meeting with Boyd and work by the girls in the Boyd house of prostitution."

We disagree with counsel's statements on several scores. The reference to the transcript on appeal which he makes refers not to this incident, but to the occasion of the telephone number in Delano [R. 173].

Actually, the variance was great and not "immaterial" as claimed by the Government (Gov. Br. 40), for it is essential to jurisdiction.

Constance Marie Bell testified as follows on this subject:

"Q. Did the defendant Ege give you any instructions or did he give any instructions to Judy in your presence regarding what was to be done when you arrived at Phoenix? A. Well, she was to phone this Joe Boyd at this motel or some place and he wasn't there, and I don't know how exactly she did get in touch with him. It was through the maid, I don't know, or Eddie left a message at the motel for her to call some other number, but I don't know how it was. [R. 73.]

* * * * *

Q. Before leaving for Phoenix did Mr. Ege give you a phone number? A. No, he didn't. [R. 123.]

* * * * *

The Court: Judy had the phone number to call Joe Boyd, is that right? A. Yes, sir. [R. 127.]

* * * * *

Q. Did Judy have the telephone number on a slip of paper, or did she use the normal telephone directory for the purpose of determining the number? A. She had it on a piece of paper.

Q. Had you ever seen Eddie Ege give her a phone number on a piece of paper in San Francisco before you went to Phoenix? A. I don't remember. [R. 130.]

* * * * *

Q. The indictment alleges that the defendant Ege in San Francisco gave you the telephone number of Mr. Boyd. Now, that is not correct is it? As I understand your testimony, he gave that telephone number to Judy? A. Yes. He didn't—I didn't say he gave it to Judy.

Q. Whom did he give it to? A. I didn't say he gave it to nobody.

Q. Did he give it to you? A. No.

Q. So that the indictment as returned by the grand jury is not correct in that regard, that he gave it to you? A. I am talking for myself. He didn't give it to me. [R. 184.]

* * *

Subsequently, the transcript of Bell's testimony before the Grand Jury was made available to counsel [R. 193]. Thereafter, a portion of this transcript relating to the above testimony was read to the witness, as follows:

Mr. Stout (Reading):

"Q. Now, did Eddie have any discussions with Judy that you recall? How did you happen to go down with Judy? A. Well, I was, well, you might call a girl friend of Judy's. We were palling around quite a bit. She was what you would call a—she

had no—I mean, she wasn't attached to anybody in particular; she went around with Eddie a lot but I mean, she wasn't attached to him. She told him that she had heard that Phoenix was open—not heard, but that she was going to Phoenix and that she had called and it was O. K., and that—

Q. Did she say whom she had called down there?

A. Well, I can't say she did, but I mean it was the same place I went to.

You know, therefore, of your own knowledge, isn't it a fact, that Judy Berg is the one who called to Phoenix? A. No, I don't know of my own knowledge, and that doesn't say I know of my own knowledge. I said I guessed; I didn't know. She had the address; I don't know how she got it; I wasn't there when she got it." [R. 272-273.]

The above evidence hardly justifies Government counsel's assertion that Ege supplied the telephone number "to the girls."

We quite agree with counsel's statement (Gov. Br. 40) that "in the course of a criminal trial it is inevitable that the evidence will at times vary from that originally expected by the government." But that is not the case here, for the government had no basis for expecting other than the evidence that was actually forthcoming from the witness. Her testimony before the Grand Jury, as it appears in the record, could not have lead the Grand Jury or the United States Attorney to a different conclusion.

Why, then, was this overt act recited in the indictment and confirmed by the bill of particulars?

(5) Overt Act 8.

This relates to the alleged telephone call from Ege in San Francisco to Constance Marie Bell in the State of Arizona. There was no evidence that Ege was in the

Northern District of California, or that the call originated there.

The government argues that this jurisdictional fact can be inferred from the evidence that Bell had left Ege in San Francisco (Gov. Br. 41). We do not concede that jurisdiction can be so established.

The government states:

“The obvious inference presented by the evidence in the case, however, was that San Francisco was the place of the call. Bell left Ege in San Francisco [Tr. 123]. There was no evidence that he had gone anywhere else to make his telephone call. According to the evidence he was a resident of San Francisco. When not driving prostitutes across the state borders he remained there. If Ege were somewhere else than San Francisco when he made that call he could have so testified. He merely denied that the telephone call had taken place at all [Tr. 295]. The jury was free to reject his testimony.” (Gov. Br. 41.)

The above might be consonant with counsel's conception of a jury argument, but hardly comports with the evidence. For example, the only occasion on which the government contends he drove a prostitute across a state line occurred in December, when it is contended that Ege drove Bell from Barstow (where she had been arrested) to Las Vegas, Nevada. To say that he was in San Francisco on all other days is contrary to the evidence, as the government places him in Folsom, Fresno, and Barstow on other occasions during the period in question. Moreover, the witness Bell testified that on her arrival in Phoenix she attempted to reach Ege in San Francisco by telephone, but was unable to do so [R. 274-275], so that if any inference is to be resorted to, it would be that Ege was not in San Francisco.

(6) Overt Act 10.

This is the charge that Ege accepted money from Bell in San Francisco.

The government states:

“ . . . The evidence established that after leaving Bruno's brothel Bell was met by Ege in Fresno and driven back to San Francisco. Bell testified that she did in fact give Ege the money secured from her work as a prostitute, but that she could not recall whether Ege took it in San Francisco or in Fresno [Tr. 186].” (Gov. Br. 41.)

The best answer to this is to look at the record. On direct examination by government counsel, Bell testified as follows:

“Q. Oh, by the way, you testified you had about seven or eight hundred dollars, I believe, as a result of the stay in Delano. What if anything did you do with that money? A. Well, when Eddie came, he got it from me in Fresno.

Q. He took it from you in Fresno? A. Uh-huh.” [R. 81.]

On cross-examination, she testified as follows:

“Q. And you testified, I believe, that in Fresno when he picked you up you gave him what remained, after you had made certain expenditures yourself, of your earnings which you had obtained in Arizona and at Delano, is that right? A. Yes.

Q. And you gave them to him there at Fresno, is that right? A. Yes.

Q. It is alleged in the indictment as overt act No. 10, ‘that in the City and County of San Francisco in October, 1953, the defendant Edward Raymond Ege took the sum of approximately \$700 from Constance Marie Bell.’ As I understand your pres-

ent testimony, that actually took place in Fresno, is that right? A. Well, I can't exactly remember where. I mean, so many different places that I gave money, that I don't recollect exactly where I gave any money any more.

Q. Where did you give him the money that you say you earned in Delano and Arizona? A. It was either in—when he picked me up or in San Francisco.

Q. So it may not have been Fresno, as you testified in this courtroom? A. It most likely was, but it could have been—

Q. What is your present best recollection? A. My present best recollection is Fresno, I am sure.”
[R. 185-186.]

It is to be noted that up until the point where she was confronted with the fact that her testimony was contrary to the allegation of the indictment, she testified freely and positively that the transaction was in Fresno. After hearing the indictment allegation, she wavered a bit, but came back to the assertion that her best recollection was Fresno, she was sure.

A finding that this act occurred in San Francisco would be contrary to the evidence.

We have quoted at length from the record in the preceding pages to avoid the criticism leveled by the government of asking that the evidence be viewed in the light most favorable to appellants (Gov. Br. 41).

If the contentions made above are correct (and we believe them to be), then the Trial Court was without jurisdiction, since none of the alleged overt acts would have been proved as taking place in the Northern District of California during the existence of the conspiracy and in furtherance and to effect the objects thereof.

Conclusion.

By directing our attention solely to the principal arguments advanced in the government brief, we do not wish to indicate that we concede any single one of the points made in the opening brief. However, we feel that the points have been properly made, and that the government brief has not succeeded in overcoming them.

We believe that the appellant Bruno was denied a fair trial in that (a) the testimony of Goldberg was improperly admitted, and that the subsequent striking of it by the Court did not cure it, nor was it cured, as government counsel urges by the verdict of the jury (*cf.*: *Krulevich v. United States*, 336 U. S. 440, 453); (b) the Court's failure to instruct that the jury must unanimously agree upon at least one overt act committed within the district, or, in the alternative, requesting special verdicts on each of the overt acts; (c) the remarks of the Judge in the presence of the jury relative to protection of the complaining witness, and the statement of the United States Attorney that she feared retaliation; and (d) a prejudicial variance occurred as among the indictment, the bill of particulars and the proof offered. The issues as to each of these matters has been set forth in the respective briefs of the parties.

Under all of the circumstances, the ends of justice would best be served by a reversal of the judgment of conviction as to the appellant Joseph Victor Bruno. For this result, we respectfully pray this Honorable Court.

Respectfully submitted,

LILLIE & BRYANT, and
WALTER M. CAMPBELL,

By WALTER M. CAMPBELL,
Attorneys for Appellant Joseph Victor Bruno.

ROBERT B. McMILLAN,
Of Counsel.

No. 14,955

IN THE

United States Court of Appeals
For the Ninth Circuit

JOSEPH BOYD, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT JOSEPH BOYD'S PETITION
FOR A REHEARING.

LEO R. FRIEDMAN,

690 Market Street, San Francisco 4, California,

*Attorney for Appellant and
Petitioner Joseph Boyd.*

FILED

APR 25 1957

PAUL P. O'BRIEN, CLERK

Subject Index

	Page
No distinction exists as to the legal and probative effect of overt acts in cases of treason and cases of conspiracy. The degree of criminality of an overt act, standing alone, has nought to do with its being an essential element of a crime	2
It is not sufficient that jurors all agree that an accused was guilty, they must all agree that the crime was committed by the accused committing the same identical acts resulting in guilt	5
The instructions did not advise the jurors they must all agree on at least one overt act	6
Insufficiency of the evidence	11
The opinion fails to consider and does not pass upon important questions of law raised by appellant Boyd	13
The court has injected a false issue into the case	15

Table of Authorities Cited

Cases	Pages
Bollenbach v. United States, 326 U.S. 607	9
Cramer v. United States, 325 U.S. 1	2, 5
Daesche v. United States, 250 Fed. 566	14
Dolan v. United States, 123 F. 2d 52	13
Glasser v. United States, 315 U.S. 60	13
Goff v. United States, 257 Fed. 294	14
Haupt v. United States, 330 U.S. 631	2, 4, 5, 8
Kawakita v. United States, 343 U.S. 717	4
Mangum v. United States, 289 Fed. 213	14
Minner v. United States, 57 F. 2d 506	13
Nibbelink v. United States, 66 F. 2d 178	14
Ryan v. United States, 99 Fed. 864	14
Samuel v. United States (9 Cir.), 169 F. 2d 787	10
Stephen v. United States (9 Cir.), 133 F. 2d 87	4
Stromberg v. California, 283 U.S. 359	5
Thomas v. United States, 57 F. 2d 1039	14
Werner v. United States, 247 Fed. 708	4
Williams v. North Carolina, 317 U.S. 287	5
Wynkoop v. United States, 22 F. 2d 799	14

Constitutions

United States Constitution:

Article III, Section 3	3
------------------------------	---

Statutes

18 U.S.C., Section 371	3
------------------------------	---

No. 14,955

IN THE

**United States Court of Appeals
For the Ninth Circuit**

JOSEPH BOYD, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

**APPELLANT JOSEPH BOYD'S PETITION
FOR A REHEARING.**

To the Honorable Albert Lee Stephens, Richard H. Chambers and Stanley N. Barnes, Judges of the United States Court of Appeals for the Ninth Circuit:

Joseph Boyd, one of the appellants above named, hereby respectfully petitions for a rehearing as to him of the above cause decided on April 1, 1957.

Said petition is based on the ground that the opinion and decision of this court is erroneous in each of the following particulars, to-wit:

1. In holding that a distinction exists in the nature and effect of an overt act when involved in the

crime of treason and when such act is involved in the crime of conspiracy.

2. In holding that a distinction exists between substantial and insubstantial overt acts charged in an indictment.

3. In holding that the instructions to the jury were sufficient to advise the jurors they must all agree on at least one of the overt acts charged as having been committed.

4. In failing to pass on important questions of law raised by appellant.

5. In resorting to evidence, incompetent for such purpose, in upholding the sufficiency of the evidence to establish the conspiracy charged.

6. In holding that the refusal to give the admittedly correct instruction as to the unanimity of the jurors was not reversible error.

NO DISTINCTION EXISTS AS TO THE LEGAL AND PROBATIVE EFFECT OF OVERT ACTS IN CASES OF TREASON AND CASES OF CONSPIRACY. THE DEGREE OF CRIMINALITY OF AN OVERT ACT, STANDING ALONE, HAS NOUGHT TO DO WITH ITS BEING AN ESSENTIAL ELEMENT OF A CRIME.

This court has declined to follow the holdings in the treason cases of *Cramer v. United States*, 325 U.S. 1, and *Haupt v. United States*, 330 U.S. 631, stating as follows:

“First, we say that the overt act of the crime of treason of Article III, § 31 (sic) of the Constitution is a substantial part of the crime. In-

substantial overt acts may qualify to move a garden variety of conspiracy agreement into the zone of crime and away from 'talking' and 'thinking'. Yet such overt acts may fall short of the substance required for a treasonable act. Thus, in a way, treason is *sui generis*."

Irrespective of the character of the act, an overt act is just as an essential element of the crime of conspiracy as it is of the crime of treason. Being an essential element of each crime, the same law and rules prevail in each case, both as to the duty of the judge to give full and complete instructions and as to the jury being unanimous as to the commission of such overt act.

Article III, Section 3, of the Constitution, defines the crime of treason as follows:

"Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two witnesses to the same overt Act, or on confession in open Court."

Title 18 U.S.C. Sec. 371, defines a criminal conspiracy as follows:

"If two or more persons conspire either to commit any offense against the United States * * * and one or more of such persons do any act to effect the object of the conspiracy, * * *."

Two essential elements must exist before either treason or criminal conspiracy can be committed, viz:

a mental activity followed by a physical act, the latter being commonly called an overt act.

In treason the crime consists of a state of mind, a criminal intent followed by a physical act to accomplish such mental determination. (*Kawakita v. United States*, 343 U. S. 717.)

In *Werner v. United States*, 247 Fed. 708, 709, it is held that:

“In addition to the obviously necessary elements, treason, as thus defined, embraces the existence of both a state of mind and the commission of overt acts * * *.”

and to the same effect is the case of *Stephen v. United States*, (6 Cir.) 133 F. 2d 87, 92.

The same two elements are involved in the case of criminal conspiracy—a meeting of the minds of the conspirators followed by the commission of overt acts.

It is immaterial whether the overt acts can be classed as substantial or insubstantial; they are sufficient if done for the purpose of carrying into effect the prior mental determination in treason to give aid and comfort to the enemy and in conspiracy to commit a crime against the United States.

In *Haupt v. United States*, *supra*, the court held the following (insubstantial) acts to be sufficient overt acts: the accused's saboteur-son lived in the father's house with his knowledge; the accused bought an automobile for his son; he helped his son get a job in a factory where they were manufacturing Norden Bomb Sights.

Thus, the attempt of this court to distinguish between overt acts in cases of treason and such acts in cases of conspiracy is without support in the law. In both cases the jurors must all agree that a particular overt act was committed before a guilty verdict can be upheld.

IT IS NOT SUFFICIENT THAT JURORS ALL AGREE THAT AN ACCUSED WAS GUILTY, THEY MUST ALL AGREE THAT THE CRIME WAS COMMITTED BY THE ACCUSED COMMITTING THE SAME IDENTICAL ACTS RESULTING IN GUILT.

Where a particular crime can be committed by the doing of various acts it is not sufficient that the jurors all agree as to the guilt of the accused, the jurors must all agree on the same identical acts having been committed, otherwise there is no unanimous verdict as contemplated by the Constitution.

Where some jurors find the crime charged was committed by the accused doing certain acts and other jurors find that the crime charged was committed by the accused doing a different set of acts, there is no unanimous verdict and no valid conviction. If it cannot be ascertained from the record that the same acts were found to have been committed by all the jurors, then the verdict is void and the conviction must be reversed. (See the *Cramer* and *Haupt* cases, *supra*; *Stromberg v. California*, 283 U. S. 359, 368; *Williams v. North Carolina*, 317 U. S. 287, 292.)

THE INSTRUCTIONS DID NOT ADVISE THE JURORS THEY MUST ALL AGREE ON AT LEAST ONE OVERT ACT.

The opinion herein admits that "The requested instruction (as to unanimity of the jury as to one overt act) was proper. We think its refusal was not error; at least not reversible error." In support of this proposition the opinion sets forth instructions given the jury, which this court states were sufficient to advise the jurors that they must all agree as to one overt act. We quote these instructions from the opinion with running comment thereon.

"1. You must find * * * Fourth, that one of the conspirators (after the formation of the conspiracy) knowingly committed at least one of the overt acts charged in the indictment."

This does not tell the jurors that they must all agree as to the commission of one of the overt acts charged; it merely tells each individual juror before he can join in a verdict of guilty he—as an individual—must be satisfied that one overt act as charged was committed in furtherance of the conspiracy.

"2. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon a failure of the prosecution to establish such proof."

This instruction has nothing to do with the unanimity of the jury as to at least one of the overt acts charged. Under this instruction the jurors were advised that the failure of any defendant to take the

stand did not justify a conviction if the prosecution failed to establish the crime charged, leaving to each juror the right to determine whether the conspiracy had been established and whether such juror found that any one of the 14 overt acts charged had been committed.

“3. You must consider each count separately as though each was set forth in a separate indictment, and in order to convict or acquit the defendant on any count, you must reach a unanimous verdict as to each count. It will take all twelve of you to convict or acquit, as the case may be, on each count.”

This instruction merely told the jurors that they must all agree that the defendant was guilty before they could return a guilty verdict. It did not advise the jury that they must all agree that the defendants did conspire and that they must all agree at least on one of the overt acts charged. Under this instruction the jurors were warranted in returning a verdict of guilty where all jurors found that the conspiracy had been entered into and some jurors found that one, two or three of the overt acts had been committed and others found that other and distinct overt acts had been committed.

“4. It is not necessary, as I have indicated, that all the overt acts charged be proved, but it is necessary that at least one of these be proved and that it be shown to have been in furtherance of the object of the conspiracy. Other overt acts than those charged may be given in evidence, but proof of one of those charged in the indictment is indispensable.”

The foregoing is a correct abstract statement of the law; but it does not tell the jurors they must all agree on at least one overt act having been committed in furtherance of the conspiracy. It still left to each juror the right to select the overt act which he thought had been committed in furtherance of the conspiracy, leaving to other jurors the right to select other and different overt acts as having been so committed.

In other words, at no place did the court instruct the jurors that they must all agree on the commission of at least one of the overt acts charged.

The opinion concedes that all overt acts relating to the activities of Constance Bell (Cindy) after she left Arizona had nothing to do with Boyd or the conspiracy charged. Thus, various acts were submitted to the jury which, as a matter of law, could not have been overt acts in furtherance of any conspiracy to which Boyd was a party.

In *Haupt v. United States, supra*, it was held that where several overt acts were charged, some of which were not established by the evidence, that the cases must be reversed where the evidence did not establish each and all of the overt acts charged, in the absence of special verdicts:

“As the acts here were pleaded to in a single count, and the jury were instructed that they could convict on any one, we would have to reverse if any act were insufficient or insufficiently proved.”

The opinion stresses the fact that no motion was made to withdraw certain of the overt acts from the

jury's consideration. The question is not whether certain acts should not have been submitted to the jury, but whether the court should have instructed that the jurors must all agree on at least one overt act having been committed in furtherance of the conspiracy charged.

The opinion emphasizes the fact that instructions should be concise and that "brevity should be a fetish." But neither conciseness nor brevity can take the place of the giving of proper judicial guidance to the jury by the court. Without full and proper judicial guidance any verdict of guilt returned by a jury deprives the accused of a fair trial and due process of law.

In *Bollenbach v. United States*, 326 U.S. 607, the Supreme Court states:

"A conviction ought to rest on an equivocal direction to the jury on a basic issue."

Here, the requested instruction as to unanimity of the jurors related to a basic issue in the case. The refusal to instruct on such a basic issue is akin to an equivocal or erroneous instruction on such issue.

The opinion in the *Bollenbach* case closes with these words:

"* * * it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however justifiable engendered by the dead record, for *ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be.*" (Italics added.)

Earlier in the *Bollenbach* case the Supreme Court states:

“* * * the question is not whether guilt may be spelt out of a record, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials in the federal courts.”

In a criminal case the court must instruct the jury on all essentials of law involved, whether or not it is requested so to do. (*Samuel v. United States*, (9 Cir.) 169 F. 2d 787, and cases therein cited.)

Here, it was the duty of the trial judge to instruct that the jurors must all agree on at least the commission of one of the overt acts before they could return a guilty verdict. A failure to so instruct or even the giving of an equivocal instruction on such a basic issue constitutes a lack of “appropriate judicial guidance” and results in the verdict of guilt having been arrived at contrary “to the procedures and standards appropriate for criminal trials in the federal courts.”

To sum up on this point. The verdict herein may have been the result of the jury all agreeing that Boyd was guilty of the conspiracy charged without any two or more of the jurors having agreed that the same overt act in furtherance thereof had been committed. In these circumstances the judgment must be reversed.

INSUFFICIENCY OF THE EVIDENCE.

The opinion herein sets forth 8 events which it is held establish appellant Boyd's guilt. We quote the same with comments thereon.

"1. The fact that before Cindy went with Judy in 1953 to Arizona Boyd and Ege knew each other.

2. Efforts of Ege in September, 1953, to 'place' Cindy somewhere.

3. Ege dispatches Cindy, transportation paid, to Scottsdale along with the above-mentioned Judy."

Mere association or acquaintance between two parties is no proof of conspiracy.

That Ege made efforts in September to place Cindy somewhere is conclusive that up to that time no conspiracy existed of which Boyd was a member to transport Cindy from California to Arizona.

That Ege paid Cindy's transportation so she could go with Judy to Arizona, again refutes any conclusion that there was a conspiracy, to which Boyd was a member, that such transportation take place. The evidence establishes that without the co-operation of Ege the girl Judy had made independent plans to go to Arizona; the sending Cindy along with Judy was no part of any conspiracy charged in the indictment, nor is there any evidence that such action was the result of any agreement with Boyd.

"4. Boyd at Scottsdale received Cindy and puts her to work for a week or two in the trade at his brothel."

5. Boyd's verbal act at Scottsdale in soliciting customers for his house when he stated that he was *bringing* over two women from California."

There is no evidence in the record that Boyd was *bringing* or any statement by him that he was *bringing* any women from California. (See R. 212.)

The arrival of Cindy and Judy at Scottsdale could have been the result of transactions to which Boyd had no part and no knowledge until the girls had left California.

"7. Evidence that Boyd did make many calls to San Francisco from his motel late in September, 1953, and in October.

8. Boyd's subsequent admissions that he had telephoned Ege at San Francisco from Phoenix or Scottsdale, apparently around the time Cindy was going to and she was working for him in his house at Scottsdale."

There is no evidence as the nature of any telephone conversations had by Boyd and Ege. This matter is left in the realm of speculation.

Boyd's extrajudicial admissions, made long after the termination of the alleged conspiracy cannot be used to establish the conspiracy. Such matter is only admissible after there has been independent proof of the conspiracy. (See Appellant's Op. Brief, p. 31.)

**THE OPINION FAILS TO CONSIDER AND DOES NOT PASS UPON
IMPORTANT QUESTIONS OF LAW RAISED BY APPELLANT
BOYD.**

On his appeal Boyd raised the following important questions of law: (1) That statements and acts of alleged co-conspirators said or done out of Boyd's presence could not be used to establish the corpus delicti of the offense of conspiracy (Boyd's Op. Br. pp. 28 to 34.) Also that the extrajudicial admissions of Boyd could not be used for any such purpose. (Op. Br. pp. 31 to 34.)

Not only has this court failed to discuss or pass upon these questions, but the opinion has disregarded such well established law and proceeded in direct conflict therewith.

Thus, the opinion resorts to acts and statements of Ege out of Boyd's presence as proof of the conspiracy; it resorts to acts of the girls Cindy and Judy out of Boyd's presence to establish the conspiracy, and it resorts to extrajudicial admissions of Boyd to establish the conspiracy. None of these matters can be used for such purpose.

There must be independent proof of the conspiracy before the acts or declarations of any alleged co-conspirator, said or done out of the accused's presence, can become competent evidence against the accused. In the absence of such independent evidence there is no legal or sufficient proof of the conspiracy.

Glasser v. United States, 315 U.S. 60;

Minner v. United States, 57 F. 2d 506;

Dolan v. United States, 123 F. 2d 52;

Thomas v. United States, 57 F. 2d 1039;
Nibbelink v. United States, 66 F. 2d 178.

It is also the law that the conspiracy cannot be established by the extrajudicial statements or admissions of the accused; that such statements are only admissible where there is independent proof of the conspiracy.

Wynkoop v. United States, 22 F. 2d 799;
Mangum v. United States, 289 Fed. 213;
Daesche v. United States, 250 Fed. 566;
Ryan v. United States, 99 Fed. 864;
Goff v. United States, 257 Fed. 294.

On March 30, 1957, this court, with Judge Albert Lee Stephens concurring, decided the case of *Ong Way Jong (Ong) v. United States*, No. 15,178, wherein the law is clearly set forth as follows:

“However, all this does not prove Ong was dealing in narcotics. Of course, there is a strong suspicion that he was. But there is no proof. Unquestionably, someone supplied the illicit heroin which Wu purchased. Wee was without doubt guilty. But, before one can be proven to be a conspirator and so bound by the admissions of a co-conspirator such as Wee, there must be some evidence produced of a conspiracy and of his connection with the crime. * * * Guilt by association would be the only basis. Ong was constantly with Wee. Wee sold narcotics. Therefore, Ong must have supplied the heroin. This is a classic non sequitur. For it must be remembered that the declarations of Wee to Wu were hearsay as to Ong. He was not present. If proof aliunde has

established a conspiracy, Ong might be bound by the conversation of Wee."

Later in the opinion this court states:

"The excellent trial judge made the mistake of considering a mass of evidence which was only admissible against Wee. It is an unquestioned rule of law that there must be substantial evidence of a conspiracy before the acts and declarations of a supposed conspirator become admissible against any other defendant, if they are not done or said in his presence. This is because such acts are transactions between third parties, with which the other defendant has not shown by other evidence to have a connection. These matters are hearsay as to him."

**THE COURT HAS INJECTED A FALSE ISSUE
INTO THE CASE.**

Throughout the opinion are statements to the effect that Boyd contended the court erred in not submitting to the jury special verdicts on the 14 overt acts. Boyd has never raised such a contention. His sole complaint on this issue was that the court erred in not instructing the jurors they must all agree on at least one of the overt acts. His only reference to special verdicts was to emphasize the point that in the absence of special verdicts there was no way of ascertaining what particular act or acts the jurors agreed upon or whether there was such a unanimity of findings.

For the foregoing reasons a rehearing should be granted.

Dated, San Francisco, California

April 29, 1957.

LEO R. FRIEDMAN,

*Attorney for Appellant and
Petitioner Joseph Boyd.*

CERTIFICATE OF COUNSEL.

I hereby certify that I am counsel for Joseph Boyd, appellant and petitioner in the above cause and that in my judgment the foregoing Petition for a Rehearing is well founded in point of law as well as in fact and that said Petition for Rehearing is not interposed for delay.

Dated, San Francisco, California,

April 29, 1957.

LEO R. FRIEDMAN,

*Counsel for Appellant and
Petitioner Joseph Boyd.*

No. 14965

United States
Court of Appeals
for the Ninth Circuit

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife, and CATHERINE YOUNG COBB,

Appellants,

vs.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, CITY OF OAKLAND and COUNTY OF ALAMEDA,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

OCT 5 1956

PAUL P. O'BRIEN, CLERK

No. 14965

United States
Court of Appeals
for the Ninth Circuit

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife, and CATHERINE YOUNG COBB,

Appellants,

vs.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, CITY OF OAKLAND and COUNTY OF ALAMEDA,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb	22
Answer to Second Amendment to Complaint ..	32
Answers of Agnes B. Graham to Request for Admissions	41
Answers of Warren C. Graham to Request for Admissions	42
Answers of Agnes B. Graham to Written Interrogatories	34
Answers of Warren C. Graham to Written Interrogatories	37
Application for Leave to Correct an Oversight and Omission in the Decree of Foreclosure and Order of Sale	235
Certificate of Clerk	228
Certificate of Clerk, Supplemental	232
Complaint	3
Complaint, Amendment to	21
Complaint, Second Amendment to	29
Complaint, Third Amendment to	43

INDEX	PAGE
Counsel, Names and Addresses of	1
Decree of Foreclosure and Order of Sale	68
Findings of Fact and Conclusions of Law	50
Judgment	65
Notice of Appeal	73
Notice of Appeal, Amended	74
Order of the Court Dated August 25, 1955 ...	47
Statement of Points on Appeal	234
Transcript of Proceedings	75
Witnesses:	
Cobb, Catherine Young	
—direct	156
—cross	165, 186
—by the court	177
Cunningham, Daniel F.	
—direct	203
Gardener, Harold W.	
—direct	119
Graham, Agnes B.	
—direct	190
—cross	196
—redirect	203
Graham, Thomas H.	
—direct	150
—cross	155

INDEX

PAGE

Witnesses—(Continued)

Graham, Warren C.

- direct108, 224
- cross125, 226
- by the court138, 146

Harkness, Lynn L.

- direct 220
- cross 222

McGregor, Hilda E.

- direct 86
- cross 107

Meehan, Henry G.

- direct 214
- cross 217

NAMES AND ADDRESSES OF COUNSEL

WAGENER, BRAILSFORD & KNOX,
1406 Bank of America Building,
Oakland 12, California,
Counsel for Appellants.

LLOYD H. BURKE,
United States Attorney,
Post Office Building,
San Francisco, California;

JOHN W. COLLIER,
City Attorney,
503 City Hall,
Oakland, California;

J. F. COAKLEY,
District Attorney,
1225 Fallon Street,
Oakland, California;

EDMUND G. BROWN,
Attorney General, State of California,
State Building,
San Francisco, California,
Counsel for Appellees.

In the District Court of the United States, Northern District of California, Southern Division

No. 30821

UNITED STATES OF AMERICA,
Plaintiff,
vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; STATE OF CALIFORNIA, a Corporate Body Politic; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, California, a Municipal Corporation; STATE BOARD OF EQUALIZATION, State of California; CROFTS & ANDERSON, a Copartnership; JOHN DOE, RICHARD ROE, SALLY POE, MARY POE, DOE and POE, a Copartnership; POE and ROE, a Copartnership; X COMPANY, a Corporation; Y COMPANY, a Corporation, and Z COMPANY, a Corporation,
Defendants.

COMPLAINT FOR FORECLOSURE OF
FEDERAL TAX LIENS

Plaintiff complains of defendants and alleges:

I.

That the plaintiff is a corporate and sovereign body politic.

II.

That this is an action for the collection of Internal Revenue taxes brought at the request of the Attorney General of the United States and authorized and sanctioned by the United States Commissioner of Internal Revenue.

III.

That the defendant, Warren C. Graham, and W. C. Graham are one and the same identical person, resident in the County of Alameda, City of Oakland, State of California, and the above-entitled judicial District.

IV.

That the defendant, Agnes B. Graham, Agnes Bourke Graham, Agnes Graham and Mrs. W. C. Graham are one and the identical person, resident in the County of Alameda, City of Oakland, State of California, and the above-entitled judicial District.

V.

That the defendant, State of California, is a corporate body politic.

VI.

That the defendants, County of Alameda, State of California, and City of Oakland, California, are municipal corporations organized and existing under and by virtue of the laws of the State of California.

VII.

That the defendants, Warren C. Graham and Agnes B. Graham, are now and at all of the times

herein mentioned have been husband and wife, domiciled in the State of California.

VIII.

That the defendants, Catherine Young Cobb and J. Preston Cobb are husband and wife and residents of the City of Oakland, County of Alameda, State of California, in the above-entitled judicial district.

IX.

That the defendant, State Board of Equalization, State of California, is a division of the defendant, State of California.

X.

That the defendant, Crofts and Anderson, plaintiff believes to be a copartnership.

XI.

That the defendants, John Doe, Richard Roe, Sally Poe, Mary Poe, Doe and Poe, a copartnership; Poe and Roe, a copartnership; X Company, a corporation; Y Company, a corporation, and Z Company, a corporation, are sued under fictitious names for the reason that the plaintiff has been and is unable to ascertain their true names, but when the true names of said persons, or any of them, are discovered the plaintiff will ask leave to amend this Complaint by designating said persons therein by their true names.

XII.

That plaintiff is informed and believes and therefore alleges that the defendants, Warren C. Gra-

ham and Agnes B. Graham, were, at the times the hereinafter-described Federal tax liens arose, the owners of real property in the city of Oakland, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H," as said drive, lot and block are shown on the map of "Montclair Estates," hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left with a radius of 185.00 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres," hereinafter referred to, the four following courses and distances: Easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ west 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$

east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general southern boundary line of said block "H" the following seven courses and distances: North $6^{\circ} 03' 40''$ west 19.70 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-"A" and all of lot 7 in block "H," as said lots and block are shown on the map of "Montclair Estates, Oakland, Alameda County, California," filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And Being Also a portion of lot 6 in block "G," as said lot and block are shown on the map of "Montclair Acres, Oakland, Alameda County, California," filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

and that the defendants, Warren C. Graham and Agnes B. Graham, his wife, were and are the owners of the furniture and furnishings located in said residence.

XIII.

That the defendants above named claim some right, title or interest in and to the above-described real and personal property or some part thereof, but that such right, title and interest of the above-named defendants, if any they have, is junior, inferior and subordinate to the hereinafter-described tax liens of the plaintiff, United States of America

For a First Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here re-alleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income and excess profits taxes for the year 1942 against Warren C. Graham, c/o Graham Ship Repair Company, 501 First St., Oakland, California, as the transferee of the Kincaid Company, in the amount of \$16,656.37.

III.

The Commissioner of Internal Revenue's assessment list carrying the assessment of said 1942 income and excess profits taxes against Warren C. Graham, as transferee of Kincaid Company was received in the office of the Collector of Internal Revenue on March 23, 1945, and said Collector issued notice and demand for the payment of said taxes to Warren C. Graham, the taxpayer, on March 27, 1945.

IV.

That notwithstanding said notice and demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

The Collector of Internal Revenue at San Francisco, California, filed a notice of lien securing the payment of said 1942 income and excess profits taxes, assessed against Warren C. Graham as the transferee of the Kincaid Company, in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property, and rights to property, whether real or personal, including the above-described real and personal property, of Warren C. Graham, the taxpayer, on March 23, 1945, the date that the Collector of Internal Revenue received the Commissioner's Assessment List carrying said Assessment of 1942 income and excess profits taxes against Warren C. Graham as transferee of Kincaid Company, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

For a Second Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income and excess profits taxes for the year 1942 against Agnes Bourke Graham, c/o Graham Ship Repair Company, 501 First Street, Oakland, California, as the transferee of the Kincaid Company, in the amount of \$16,773.02.

III.

The Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1942 income and excess profits taxes against Agnes Bourke Graham, as transferee of the Kincaid Company was received in the office of the Collector of Internal Revenue on May 11, 1945, and said Collector issued Notice and Demand for the payment of said taxes to Agnes Bourke Graham, the taxpayer, on May 21, 1945.

IV.

That notwithstanding said Notice and Demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

The Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of the said 1942 income and excess profits taxes assessed against Agnes Bourke Graham, as the transferee of the Kincaid Company, in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Agnes Bourke Graham, the taxpayer, on May 11, 1945, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying said assessment of 1942 income and excess profits taxes against Agnes Bourke Graham as transferee of Kincaid Company, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

For a Third Cause of Action Plaintiff Allges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income taxes for the years 1945 and 1946 against Warren C. and Agnes B. Graham, 6035 Wood Drive, Oakland, California, in the amount of \$1,139,375.68.

III.

That the Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1945 and 1946 income taxes against Warren C. and Agnes B. Graham was received in the office of the Collector of Internal Revenue on August 1, 1949, and said Collector issued Notices and Demands for payment of said taxes to Warren C. and Agnes B. Graham, the taxpayers, on August 1, 1949, and on September 2, 1949.

IV.

That notwithstanding said Notice and Demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

That the Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of said 1945 and 1946 income taxes assessed against Warren C. and Agnes B. Graham in the office of the County Recorder of Alameda County, State of California, on November 30, 1949.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. and Agnes B. Graham, the taxpayers, on August 1, 1949, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying said assessment of 1945 and 1946 income taxes against Warren C. and Agnes B. Graham, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 30th day of November, 1949. That said lien is still outstanding and existing.

For a Fourth Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue on December 6, 1946, assessed Federal Withholding taxes, penalties and interest against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, 1401 Middle Harbor Road, Oakland, California, for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946 upon his, the Commissioner's December, 1946, Special No. 2 Assess-

ment List, lines 00, 02, 04, 06, 08, 10 and 12, and December, 1946, Supplemental List Account No. 350543 in the aggregate amount of \$542,706.95.

III.

That the Commissioner of Internal Revenue's (telegraphic jeopardy) December, 1946, Special Assessment List, No. 2, carrying assessments of said Federal Withholding taxes, penalties and interest in the aggregate amounts of \$542,456.85 against Warren C. Graham and Agnes Graham, doing business as the Graham Ship Repair Co., was received in the office of the Collector of Internal Revenue at San Francisco, California, on December 11, 1946. The Collector issued Notice and Demand for payment of said taxes to Warren C. Graham and Agnes Graham, the taxpayers, on December 9, 1946.

The Commissioner of Internal Revenue's December, 1946, Supplemental Assessment List, Account No. 350543, carrying an assessment of penalties imposed upon Warren C. Graham and Agnes Graham in the sum of \$250.00 was received in the office of the Collector of Internal Revenue at San Francisco, California, on the 13th day of January, 1947. The Collector issued a Notice and Demand for the payment of said penalties to Warren C. Graham and Agnes Graham, the taxpayers, on December 9, 1946.

IV.

That no part of said withholding taxes, penalties and interest was paid within ten days of the issuance of said Notices and Demands for payment.

On December 9, 1946, the Collector of Internal Revenue filed a Notice of Lien securing the payment of said withholding taxes, penalties and interest assessed against Warren C. Graham and Agnes Graham upon the Commissioner's December, 1946, Special Number 2 List, in the office of the County Recorder of Alameda County, State of California.

V.

That subsequent to the filing of said Notices of Tax Liens the Collector of Internal Revenue at San Francisco, California, has made collections from Warren C. Graham and Agnes Graham in the amount of \$202,998.89 and applied said collection to the payment of said withholding taxes.

The withholding taxes assessed against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Co., for the third quarter of the year 1946 upon the Commissioner of Internal Revenue's December, 1946, Special No. 2, Line 12, Assessment List in the sum of \$14,192.92, inclusive of assessed penalties and interest, were abated in the sum of \$2,693.18 on September 30, 1947.

VI.

That there remains assessed, unpaid and outstanding against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Co., withholding taxes, penalties and assessed interest, for the four quarters of the year 1945 and the first three quarters of the year 1946 in the sum of \$337,014.78, exclusive of accruing interest and penalties.

VII.

That the liens in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. Graham and Agnes Graham, the taxpayers, on December 11, 1946, and January 13, 1947, respectively, the dates that the Commissioner's December, 1946, Special Assessment List, No. 2, and December, 1946, Supplemental List, were received in the office of the Collector of Internal Revenue at San Francisco, California, carrying said assessments of withholding taxes, penalties and interest against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, for the four quarters of the year 1945 and the first three quarters of the year 1946, and said liens became valid as to all of the world upon the recordation of notices thereof in the office of the County Recorder of Alameda County, State of California, on the 9th day of December, 1946, and the 21st day of May, 1947. That said liens are still outstanding and existing.

For a Fifth Cause of Action, Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue as-

sessed Federal income taxes for the year 1942 against Warren C. Graham, 6035 Wood Drive, Oakland, California, in the amount of \$12,993.30.

III.

That the Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1942 income taxes against Warren C. Graham was received in the office of the Collector of Internal Revenue on March 23, 1945.

IV.

That \$1,336.93 of the said tax has been paid and that \$11,656.37, together with penalties and interest, as provided by law, remains assessed, outstanding and unpaid.

V.

That the Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of said 1942 income taxes assessed against Warren C. Graham in the office of the County Recorder of Alameda County, State of California, on the 10th of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. Graham, the taxpayer, on March 23, 1945, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying the said assessment of 1942 income taxes against Warren

C. Graham, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

Wherefore the Plaintiff prays:

1. That at the term next after the parties to the above-entitled proceeding have been duly notified thereof, unless otherwise ordered by the Court, the Court proceed to adjudicate all matters involved herein and finally determine the merits of all claims to and liens upon the property and rights to property in this Complaint above described, and that the Court decree that the Plaintiff, United States of America, has first, prior and paramount liens upon the following-described real and personal property, to wit, that certain real property situated, lying and being in the City of Oakland, County of Alameda, State of California, consisting of the residence located at 6035 Wood Drive, in the said city, and more particularly described in Paragraph XII of this Complaint, which is incorporated by reference in this prayer to the same force and effect as if fully set forth herein, together with the furniture and furnishings located in said residence and upon said real property, and that said liens consist of the following:

(a) A lien dating from the 23rd day of March, 1945, securing payment of 1942 income and excess

profits taxes assessed against W. C. Graham as the transferee of Kincaid Company, in the sum of \$16,-656.37, together with interest thereon at the rate of 6 per cent per annum from the 27th day of March, 1945.

(b) A lien dating from the 11th day of May, 1945, securing payment of the 1942 income and excess profits taxes assessed against Agnes Bourke Graham as transferee of the Kincaid Company, in the sum of \$16,773.02, together with interest thereon at the rate of 6 per cent per annum from the 21st day of May, 1945.

(c) A lien dating from the 1st day of August, 1949, securing the payment of 1945 and 1946 Federal income taxes assessed against Warren C. and Agnes B. Graham, in the amount of \$1,139,375.68, together with interest thereon at the rate of 6 per cent per annum from the 1st day of August, 1949, and a negligence penalty equal to 5% of the said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.

(c) A lien dating from the 6th day of December, 1946, securing payment of Federal withholding taxes for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946, assessed against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, and now unpaid, in the sum of \$337,014.78, together with interest upon the sum of \$336,764.78 at the rate of 6 per cent per annum

from the 9th day of December, 1946, and upon the sum of \$250.00 at the rate of 6 per cent per annum from the 13th day of January, 1947, and a negligence penalty equal to 5 per cent of said principal amounts for failure to pay said tax within ten days after Notice and Demand so to do.

(e) A lien dating from the 3rd day of March, 1945, securing the payment of 1942 Federal income taxes assessed against Warren C. Graham, in the sum of \$11,656.37, together with interest thereon at the rate of 6 per cent per annum from the day of, 1945, and a negligence penalty equal to 5% of said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.

2. That the Court decree a sale of the above-described real and personal property and rights to property by the United States Marshal for the Northern District of California, and a distribution of the proceeds of such sale according to the findings of the Court in respect to the interest of the parties and of the United States.

3. That the Court award judgment to the United States and against the defendants, Warren C. Graham and Agnes Bourke Graham, for its costs in this action incurred.

4. For such other and further relief as to the Court may seem meet, just and equitable in the premises.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ MACKLIN FLEMING,
Assistant United States
Attorney;

/s/ PAUL E. ANDERSON,
Special Attorney, Bureau of
Internal Revenue.

[Endorsed]: Filed August 17, 1951.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Comes now the plaintiff, United States of America, pursuant to a Stipulation by and between the said plaintiff and those defendants that have filed a response to the Complaint of the said plaintiff, and by way of amending its Complaint for foreclosure of Federal tax liens heretofore filed, alleges as follows:

I.

That paragraph III of the Fifth Cause of Action on page 11 of the said Complaint be amended by adding the following allegation thereto:

“The said Collector issued Notice and Demand for payment of the said taxes to Warren C. Graham, the taxpayer, on March 27, 1945.”

II.

That paragraph (e) of the prayer for relief on page 13 of the said Complaint be amended to state as follows:

“A lien dating from the 23rd day of March, 1945, securing the payment of 1942 Federal Income taxes assessed against Warren C. Graham in the sum of \$11,656.37, together with interest thereon at the rate of 6 per cent per annum from the 27th day of March, 1945, and a negligence penalty equal to 5 per cent of said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.”

Wherefore, the plaintiff prays that it be granted all of the relief against the above defendants heretofore requested in its Complaint for foreclosure of Federal tax liens.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ CHARLES ELMER COLLETT,
Assistant U S Attorney;

/s/ PAUL E. ANDERSON,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: Filed January 2, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS WARREN C.
GRAHAM, AGNES B. GRAHAM, CATHER-
INE YOUNG COBB and J. PRESTON COBB

Come now defendants Warren C. Graham and
Agnes B. Graham his wife, and Catherine Young

Cobb and J. Preston Cobb, her husband, and answering Plaintiff's complaint on file herein admit, deny and allege as follows, to wit:

I.

Answering Paragraph XII on pages 3 and 4, these defendants deny that Defendants Warren C. Graham and Agnes B. Graham were the owners or either of them was the owner of the property therein described at the time the Federal Tax Liens set forth in Plaintiff's complaint arose and in this regard allege that Defendant Catherine Young Cobb was the owner of said property at all times pertinent to this action and now is the owner thereof;

II.

Further answering said Paragraph XII, deny that Defendants Warren C. Graham and Agnes B. Graham, or either of them were at the times therein set forth the owners of the furniture and furnishings located in said residence and in this regard allege that Catherine Young Cobb was at all of said times and now is the owner of said furniture and furnishings;

III.

Answering Paragraph XIII on page 4, Defendant Catherine Young Cobb admits that she claims a right, title and interest in and to said real and personal property; denies that the same is junior and/or inferior and/or subordinate to the tax liens of Plaintiff, set forth in said complaint;

IV.

Answering Paragraph I of Plaintiff's first cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

V.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's first cause of action and basing their denial on that ground deny each and every, all and singular, generally and specifically, the allegations therein contained;

VI.

Answering Paragraph VI of the first cause of action, deny that plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

VII.

Answering Paragraph I of the second cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

VIII.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's second cause

of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

IX.

Answering Paragraph VI of the second cause of action, deny that plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

X.

Answering Paragraph I of the third cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

XI.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's third cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XII.

Answering Paragraph VI of the third cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described,

for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XIII.

Answering Paragraph I of Plaintiff's fourth cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

XIV.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's fourth cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XV.

Answering Paragraph VII of Plaintiff's fourth cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XVI.

Answering Paragraph I of the fifth cause of action, defendants hereby refer to and incorporate Paragraphs I, II and III of this answer as hereinabove set forth;

XVII.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's fifth cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XVIII.

Answering Paragraph VI of Plaintiff's fifth cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XIX.

By way of further answer to Plaintiff's complaint and answering specifically Paragraphs IV of the first cause of action, IV of the second cause of action, IV of the third cause of action, V and VI of the fourth cause of action and IV of the 5th cause of action, defendants allege that in addition to the payments mentioned in Plaintiff's complaint the sum of Five Hundred and Eleven Thousand Dollars (\$511,000.00) was paid on account of the various amounts covered by the liens of Plaintiff; that these defendants have no information or belief as to which of the various claims of Plaintiff this amount was credited.

Wherefore, Defendants and each of them pray judgment:

And for a Further, Separate and Second Defense to Plaintiff's complaint on file herein Defendants and each of them allege that the causes of action set forth in Plaintiff's complaint are barred by laches and by the provisions of Sections 275, 276 (c) and 3671 I.R.C. Title 26, U.S.C.

Wherefore, Defendants and each of them pray judgment:

And for a Further, Separate and Third Defense to Plaintiff's complaint on file herein Defendants and each of them allege that in the month of October, 1951, Defendants Warren C. Graham and Agnes B. Graham, his wife, submitted formal offers in compromise to the Bureau of Internal Revenue of the United States of America covering all of the causes of action set forth in Plaintiff's complaint and the entire subject matter thereof; that Defendants are informed and believe that said offers and compromise were referred to the Commissioner of Internal Revenue in Washington, D. C., for final action and that said offers are still pending; that if said offers and compromise are accepted the trial of this action would be an idle act and all of the issues presented by Plaintiff's complaint and this answer would be moot.

Wherefore, Defendants and each of them pray that Plaintiff take nothing by its complaint on file herein; that they be dismissed with their costs of

suit and for such other and further relief as to the Court may seem proper in the premises.

WAGENER and BRAILSFORD,

/s/ AUGUSTIN DONOVAN,

Attorneys for Defendants, Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and
J. Preston Cobb.

Duly verified.

[Endorsed]: Filed May 15, 1952.

In the United States District Court in and for the
Northern District of California, Southern Division

Civil No. 30821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM, et al.,

Defendants.

STATE OF CALIFORNIA,

Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, WARREN C.
GRAHAM, et al.,

Defendants in Intervention.

SECOND AMENDMENT TO COMPLAINT

Comes now plaintiff United States of America,
pursuant to leave of court, and by way of second

amendment to its complaint for foreclosure of Federal tax liens heretofore filed, alleges for a Sixth Cause of Action as follows:

I.

The allegations of paragraphs I to XIII, pages 1 to 5, of the original complaint are here realleged and adopted.

II.

On October 4, 1945, defendants Warren C. Graham and Agnes B. Graham acquired title to, and became the owners in joint tenancy of, the real property described in paragraph XII, pages 3 and 4, of the original complaint. Thereafter defendants Warren C. Graham and Agnes B. Graham conveyed record title to said property to defendant Frank Hansen without a fair consideration and with the intent to hinder, delay, and defraud plaintiff in the collection of the Federal taxes which are the subject of the five causes of action set forth in the original complaint, which causes of action are herein adopted by reference.

III.

In the event that defendants Warren C. Graham and Agnes B. Graham made other conveyances of said property, which conveyances are not of record, each and every such conveyance was made without a fair consideration and with the intent to hinder, delay, and defraud plaintiff in the collection of said Federal taxes.

IV.

The conveyance to defendant Frank Hansen and

any other conveyances by defendants Warren C. Graham and Agnes B. Graham were made at a time when defendants Warren C. Graham and Agnes B. Graham were, or were thereby rendered, insolvent.

V.

Said conveyances were made at a time when defendants Warren C. Graham and Agnes B. Graham intended to, or believed that they would, incur debts beyond their ability to pay as they matured.

VI.

Said conveyances were made at a time when defendants Warren C. Graham and Agnes B. Graham were engaged, or were about to engage, in a business or transaction for which the property remaining in their hands after said conveyances was an unreasonably small capital.

VII.

Defendant Frank Hansen, at the request of defendants Warren C. Graham and Agnes B. Graham, conveyed record title to said property to their daughter, defendant Catherine Young Cobb, without a fair consideration. Defendant Catherine Young Cobb was not a bona fide purchaser of said property and took title thereto with the intent to hinder, delay and defraud plaintiff in the collection of the Federal taxes which are the subject of the five causes of action set forth in the original complaint and adopted herein by reference.

Wherefore, plaintiff prays that in addition to the other relief requested in the original complaint, each

and every conveyance of the property described in paragraph XII, pages 3 and 4, of the original complaint, from defendants Warren C. Graham and Agnes B. Graham to defendant Frank Hansen and to any other grantees, and the conveyance from defendant Frank Hansen to defendant Catherine Young Cobb, be set aside as a fraud on plaintiff as a creditor of defendants Warren C. Graham and Agnes B. Graham, and that said property be sold free and clear of said conveyances in satisfaction or partial satisfaction of the tax liens alleged in the first five causes of action set forth in the original complaint.

/s/ LLOYD H. BURKE,

United States Attorney,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed March 29, 1954.

[Title of District Court and Cause.]

ANSWER TO SECOND AMENDMENT
TO COMPLAINT

Come now defendants Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb and J. Preston Cobb, her husband, and, answering Plaintiff's Second Amendment to Complaint on file herein, admit, deny and allege as follows, to wit:

I.

Answering Paragraph I these defendants refer to, incorporate herein and adopt each and every provision of Paragraphs I, II and III of their answer to the original complaint on file herein.

II.

Deny each and every, all and singular, generally and specifically the allegations of Paragraph II, commencing with the word "Thereafter" on line 4, and Paragraphs III, IV, V, VI and VII.

III.

Further answering said Second Amendment to Complaint, Defendants and each of them refer to and incorporate herein each and every admission, denial and allegation of their answer to the complaint heretofore filed herein.

Wherefore, Defendants and each of them pray that Plaintiff take nothing by its Second Amendment to Complaint on file herein; that they be dismissed with their costs of suit and for such other and further relief as to the Court may seem proper in the premises.

WAGENER and BRAILSFORD,

/s/ AUGUSTIN DONOVAN,

Attorneys for Defendants, Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and
J. Preston Cobb.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed April 14, 1954.

[Title of Disrict Court and Cause.]

ANSWERS OF DEFENDANT AGNES B. GRAHAM TO WRITTEN INTERROGATORIES

Defendant, Agnes B. Graham, hereby makes the following responses to the written interrogatories propounded by Plaintiff:

I.

1. My husband told me the price was Thirty-three Thousand, Five Hundred Dollars (\$33,500.00).
2. Warren C. Graham and the Central Bank of Oakland, California.
3. Carroll M. McKee and Opal L. McKee.
4. Property purchased by Warren C. Graham while I was in New York, without my knowledge.
5. Warren C. Graham and Agnes B. Graham.
6. Until May 16, 1946.
7. Catherine Young Cobb, daughter of Warren C. Graham.

II.

1. Three Thousand, Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) paid by Catherine Young Cobb, daughter of Warren C. Graham, on May 16, 1946. Property held in trust by Frank Hansen for Catherine Young Cobb.
2. Catherine Young Cobb, daughter of Warren C. Graham, and step-daughter of Agnes B. Graham.
3. Warren C. Graham.
4. August 6, 1946.
5. No knowledge.
- 6.

- a. No knowledge.
- b. No knowledge.
- c. No knowledge.
- d. No knowledge.
- e. No knowledge.

7. None.

8. No knowledge except for Catherine Young Cobb.

9.

- a. No knowledge.
- b. No knowledge.
- c. No knowledge.
- d. No knowledge.
- e. No knowledge.

10. No knowledge.

11. No knowledge.

12. No knowledge.

13. No knowledge.

14. No knowledge.

15. No knowledge.

16. No knowledge.

17. No knowledge.

18. No knowledge.

19. Six years later, as of January 17, 1952, filed bankruptcy petition with husband in the District Court of the United States Northern District of California, Case No. 40472. Discharged May 26, 1953.

III.

- 1. No knowledge.
- 2. No knowledge.
- 3. Step-daughter.

4. Three Thousand, Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) to Warren C. Graham, my husband.

5. No knowledge.

6. No knowledge.

7. No.

8. May 16, 1943. Was in possession when deed was executed.

9. No direct knowledge.

10.

a. Several discussions at 6035 Wood Drive, Oakland, California, and at Hotel Statler, Washington, D. C., between January 15, 1946, and April 1, 1946, by and between Warren C. Graham and Agnes B. Graham; next on or about April 2, 1946, by and between Warren C. Graham, Agnes B. Graham and Catherine Young Cobb.

b. Answered under "a" above.

c. Answered under "a" above.

d. Warren C. Graham and Agnes B. Graham until May 16, 1946, when sold to Catherine Young Cobb. Held in trust by Frank Hansen from August 6, 1946, to May 20, 1948, during absence of Catherine Young Cobb from California.

e. No knowledge.

Dated: June 14, 1954.

/s/ AGNES B. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

ANSWERS OF DEFENDANT WARREN C. GRAHAM TO WRITTEN INTERROGATORIES

Defendant Warren C. Graham hereby makes the following responses to the written interrogatories propounded by Plaintiff:

I.

1. Thirty-three Thousand Five Hundred Dollars (\$33,500.00).
2. Warren C. Graham.
3. Carrol M. McKee and Opal I. McKee.
4. Property purchased by Warren C. Graham, accompanied by daughter, Catherine Young Cobb, in absence of Mrs. Agnes B. Graham, who was in New York City. Purchased by Warren C. Graham on September 7, 1945, with One Thousand Dollars (\$1,000.00) down payment and checks and cash on September 12, 1945, and October 4, 1945, totaling Thirteen Thousand, Five Hundred Dollars (\$13,500.00), together with Twenty Thousand Dollars (\$20,000.00) First Deed of Trust of Central Bank of Oakland, California.
5. Warren C. Graham and Agnes B. Graham.
6. Until May 16, 1946.
7. Catherine Young Cobb, daughter of Warren C. Graham, on May 16, 1946.

II.

1. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) by daughter of

Warren C. Graham, Catherine Young Cobb, on May 16, 1946.

2. Catherine Young Cobb, daughter of Warren C. Graham.

3. Warren C. Graham.

4. August 6, 1946.

5. Warren C. Graham on August 6, 1946.

6.

a. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32).

b. To hold in trust by Frank Hansen for daughter of Warren C. Graham, Catherine Young Cobb, until she returned to California.

c. Letter from Frank Hansen agreeing to hold said property in trust for Catherine Young Cobb, and to turn property over to her. In possession of Warren C. Graham, 4255 Howe Street, Oakland 11, California.

d. None.

e. Answered under b and c.

7. None.

8. Yes; and in writing.

9.

a. Catherine Young Cobb, daughter of Warren C. Graham.

b. Any oral instructions given to Frank Hansen on August 6, 1946.

c. Frank Hansen and Warren C. Graham at Graham Ship Repair Co., 501 First Street, Oakland, California.

d. At 501 First Street, Oakland, California, at office of Graham Ship Repair Company.

e. May 16, 1946.

f. May 16, 1946.

10. No. Definitely not. Furthermore, had the moneys collected by ex-collector James F. Smythe and Deputy Collector Daniel F. Cunningham from the assets of Warren C. Graham been applied to the Internal Revenue Account of Warren C. Graham, these taxes mentioned herein would have been paid in full.

11. In business transactions in excess of One Million Dollars (\$1,000,000.00) assets at time of transfer in excess of liabilities.

12. None. Over a year later, in early 1948, or late 1947, an assignment was made to the Central Bank, Oakland, California, of some airplane engines, held as collateral for a loan.

13. No.

14. No.

15. No.

16. Would require employment of accountant to show distribution in several enterprises.

17. Answered under No. 16, above.

18. Over a year later, in early 1948, or late 1947, an assignment was made to the Central Bank of Oakland, California, of some airplane engines, valued at Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and held by them as collateral for a loan.

19. Six years later, on January 17, 1952, filed bankruptcy petition in the District Court of the United States, Northern District of California, Case No. 40473. Discharged May 26, 1953.

III.

1. Warren C. Graham.
2. No. I do not believe so.
3. Yes.
4. Yes.
5. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) advanced to Warren C. Graham at Kincaid Mfg. Co., 17 East 42nd Street, New York 17, New York. Used money in business.
6. Records of Kincaid Mfg. Co., where daughter, Catherine Young Cobb, worked as Research Assistant at Ten Thousand Dollars (\$10,000.00) per year. In possession of Warren C. Graham, 4255 Howe Street, Oakland 11, California.
7. No.
8. May 16, 1946. Was already in possession at time of this deed.
9. None except those mentioned herein.
10.
 - a. Several discussions at 6035 Wood Drive, Oakland, California, and at Hotel Statler, Washington, D. C., between January 15, 1946, and April 1, 1946, by and between Warren C. Graham and Agnes B. Graham; next, at 6035 Wood Drive, Oakland, California, between Warren C. Graham, Agnes B. Graham and Catherine Young Cobb, on or about April 2, 1946; and third between Warren C. Graham at 6035 Wood Drive, Oakland, California, and

Catherine Young Cobb at Valdosta, Georgia, on May 16, 1946.

b. Answered under "a" above.

c. Answered under "a" above.

d. Warren C. Graham and Agnes B. Graham until until May 16, 1946, when sold to daughter, who at this time had returned East to join husband coming back from overseas army service; held in trust by Frank Hansen from August 6, 1946, to May 20, 1948, about the time of Catherine Young Cobb's return to California.

e. Not considered necessary at the time.

Dated: June 14, 1954.

/s/ WARREN C. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of Disrict Court and Cause.]

ANSWERS OF DEFENDANT AGNES B. GRAHAM TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Defendant Agnes B. Graham hereby makes the following responses to the Request for Admissions Propounded by Plaintiff:

1. No. Was signed under duress while my husband, Warren C. Graham, was in McNeil Island Federal Penitentiary, McNeil Island, Washington. The photostat of document shows it is fraudulent in that, after being signed by me during the first half of 1951, the signing date was altered and changed by Internal Revenue, or others, to November 21, 1950.

2. Same Answer as "1" above.

Dated: June 14, 1954.

/s/ AGNES B. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

ANSWERS OF DEFENDANT WARREN C.
GRAHAM TO PLAINTIFF'S REQUEST
FOR ADMISSIONS

Defendant Warren C. Graham hereby makes the following responses to the Request for Admissions Propounded by Plaintiff:

1. Yes.

2. No. Was signed by Warren C. Graham under duress from Internal Revenue at McNeil Island

Federal Penitentiary. The photostat of document shows it is fraudulent in that, after being signed at McNeil Island Penitentiary during the first half of 1951, the signing date was altered and changed by Internal Revenue, or others to November 21, 1950.

3. No. Same answer as "2" above.

Dated: June 14, 1954.

/s/ WARREN C. GRAHAM.

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

THIRD AMENDMENT TO COMPLAINT

Comes now the plaintiff, the United States of America, and pursuant to a prior oral motion to amend the pleadings to conform to the evidence, which motion was made during the course of the trial, realleges and adopts all previous allegations and causes of action as set forth in the original complaint and the two previous amendments thereto with the following specific amendments:

1. The allegations of paragraphs III and VI of the First Cause of Action of the original complaint are hereby amended to the extent of substituting

the date of March 26, 1945, for the date of March 23, 1945, wherever the latter (March 23, 1945), date appears in the said paragraphs of the original complaint.

2. The allegations of paragraph IV of the First Cause of Action of the original complaint are hereby amended by substituting therefor the following allegations:

That subsequent to filing the notices of tax liens, the Collector of Internal Revenue at San Francisco, California, has made collections from Warren C. Graham in the amount of \$8,587.51 and applied said collections to the payment of said income and excess profits taxes.

That there remains assessed, unpaid and outstanding against Warren C. Graham for 1942 income and excess profits taxes a total tax liability of \$8,068.86, plus interest as provided by law from March 27, 1945.

3. Paragraphs III and VI of the Second Cause of Action of the original complaint are hereby amended to the extent of substituting the date of May 14, 1945, for the date of May 11, 1945, wherever the latter date appears in said paragraphs of the original complaint.

4. Paragraphs V and VI of the Third Cause of Action of the original complaint are hereby amended to the extent of substituting the date of December 12, 1949, for the date of November 30,

1949, wherever the latter date appears in said paragraphs of the original complaint.

5. The allegations of paragraph V of the Fourth Cause of Action of the original complaint are hereby amended to the extent of substituting the amount of \$203,505.12 for the amount of \$202,998.89 where the latter amount appears in said paragraph of the original complaint.

6. The allegations of paragraph VI of the Fourth Cause of Action of the original complaint are hereby amended to the extent of substituting the amount of \$337,918.01 for the amount of \$337,014.78 where that amount appears in said paragraph of the original complaint.

7. The allegations of the Fifth Cause of Action are hereby withdrawn and abandoned.

The prayers of the previous complaint and amendments thereto are completely amended as follows:

Wherefore, the plaintiff prays:

1. That the liens as set forth in the First, Second and Fourth Causes of action be adjudged first and prior to all other claims or interests of each and every defendant; and that the liens of the United States as set forth in the Third Cause of Action be accorded their proper priority in relation to the lien claims asserted by the defendants State of California, County of Alameda and City of Oakland against the property here involved.

2. That the Court decree a sale of the previously described real and personal property by the United States Marshal for the Northern District of California, and a distribution of the proceeds of such sale be made to the United States in accordance with its priority of liens.

3. That the Court award a deficiency judgment to the United States and against defendants Warren C. Graham and Agnes B. Graham in the amount of their tax liabilities to the United States as set forth in the First, Second, Third and Fourth Causes of Action, less the amount realized from the foreclosure sale.

4. That the Court award judgment to the United States and against the defendants Warren C. Graham and Agnes B. Graham for its costs incurred in this action.

5. That, in addition to the other relief requested, each and every conveyance of the property described in the allegations of paragraph XII of the original complaint and here realleged and adopted, from defendants Warren C. Graham and Agnes B. Graham to defendant Frank Hansen and to any other grantees, and the conveyance from defendant Frank Hansen to defendant Catherine Young Cobb, be set aside as a complete sham and also as a fraud on the plaintiff as a creditor of defendants Warren C. Graham and Agnes B. Graham, and the said property be sold free and clear of said conveyances in satisfaction or partial satisfaction of the tax

liens alledged in the first four causes of action set forth in the original complaint.

LLOYD H. BURKE,

United States Attorney,

By /s/ CHARLES ELMER COLLETT,

Assistant United States At-
torney,

/s/ ALONZO W. WATSON, JR.,

Attorney, Office of Regional Counsel, Internal
Revenue Service.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 22, 1955.

[Title of District Court and Cause.]

ORDER

It Is Hereby Ordered that the complaint in this action be amended to conform to the proof in accordance with the Third Amendment to the Complaint filed by plaintiffs on August 22, 1955, and that the Complaint in Intervention be amended in accordance with the stipulation regarding same filed on August 16, 1955.

It Is Further Ordered that the plaintiff, United States of America, the plaintiff in intervention, the State of California, and the defendants, County of Alameda and City of Oakland, have judgment on their liens in the following order which shall constitute the priority of the liens:

(1) In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the first cause of action of the complaint;

(2) In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the second cause of action of the complaint;

(3) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the fourth cause of action of the complaint;

(4) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month in \$6,145.17 until paid;

(5) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid.

(6) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from

August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

(7) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the third cause of action of the complaint;

(8) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

(9) In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of \$835.70, as set out in paragraph 10 of the Stipulation filed herein on August 18, 1955.

It Is Further Ordered that the property described in Paragraph XII of the complaint be sold by the United States Marshal free of the conveyances in issue here but subject to the Reservations granted to the City of Oakland as set forth in the stipulation of facts filed herein on August 16, 1955, the proceeds of said sale to be applied to the payment of the above liens according to their priority.

It Is Further Ordered that judgment be entered as prayed for in Paragraph 5 of the prayer of the Third Amendment to the complaint filed on August 22, 1955.

Findings of fact, conclusions of law, decree of sale, and judgment to be prepared by plaintiff.

Dated: August 25, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed August 26, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. This is an action to foreclose Federal tax liens brought at the request of the Attorney General of the United States and authorized and sanctioned by the Commissioner of Internal Revenue.

2. The Federal tax liens arose as a result of the assessment of tax liabilities against defendants Warren C. Graham and Agnes B. Graham, husband and wife, residing in the City of Oakland, County of Alameda, State of California.

3. The assessed Federal tax liabilities are as follows:

a. The Commissioner of Internal Revenue assessed Federal income and excess profits taxes and accrued interest for the year 1942 in the amount of \$16,656.37 against Warren C. Graham as a transferee of the Kincaid Company. On March 26, 1945,

the Collector of Internal Revenue for the Second District of New York received the assessment list carrying assessments of the 1942 income and excess profits taxes against Warren C. Graham. On March 27, 1945, notice and demand was served upon Warren C. Graham for these tax liabilities.

On May 2, 1946, the Collector of Internal Revenue for the Second District of New York transferred this assessed tax liability to the Collector in San Francisco; and, on May 9, 1946, the Collector in San Francisco placed this liability on his current tax list. On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,656.37 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$8,068.86 exclusive of interest from the date of notice and demand.

b. The Commissioner of Internal Revenue in May of 1945 assessed Federal income and excess profits taxes and interest then accrued for the year 1942, in the amount of \$16,773.02, against Agnes B. Graham, as a transferee of the Kincaid Company. On May 14, 1945, the Collector of Internal Revenue for the Second District of New York received the assessment list carrying the assessments of the 1942 income and excess profits tax liabilities against Agnes B. Graham. On May 21, 1945, there was served upon Agnes B. Graham a notice and demand for payment of this tax liability. On May 2, 1946, the Collector of Internal Revenue for the

Second District of New York transferred these assessed tax liabilities to the Collector in San Francisco. On May 9, 1946, the Collector in San Francisco placed this liability on his current tax list.

On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,773.02 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$16,773.02, exclusive of interest from the date of notice and demand.

c. The Commissioner of Internal Revenue in December of 1946 assessed withholding and Federal insurance contributions taxes, penalties and interest for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946 in the aggregate amount of \$542,706.95 against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company.

On December 6, 1946, the Collector of Internal Revenue in San Francisco received a telegraphic jeopardy assessment list carrying the above-designated assessments. On December 9, 1946, the Collector served a notice and demand for payment; and, on the same day, caused a notice of lien covering these taxes to be recorded by the County Recorder of the County of Alameda. The present outstanding balance of this assessed and recorded tax liability is \$365,040.50, exclusive of interest on the sum of \$337,918.01 from the date of notice and demand.

d. The Commissioner of Internal Revenue in July of 1949 assessed Federal income taxes for the years 1945 and 1946 against Warren C. Graham and Agnes B. Graham in the amount of \$1,139,375.86. On August 1, 1949, the Collector in San Francisco received the assessment list carrying the assessment for 1945 and 1946 income taxes against Warren C. Graham and Agnes B. Graham.

On August 1, 1949, and on September 2, 1949, the Collector of Internal Revenue served on Warren C. and Agnes B. Graham notices and demands for payment of this liability. On December 12, 1949, the Collector caused a notice of tax lien in the amount of \$1,139,375.68 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$1,139,375.68, exclusive of interest from the date of notice and demand.

4. The above-described Federal tax liabilities are asserted as liens against the interests of Warren C. Graham and Agnes B. Graham in the following described real property located in Alameda County:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H", as said drive, lot and block are shown on the map of "Montclair Estates", hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left

with a radius of 185.0 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres", hereinafter referred to, the four following courses and distances: easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ West 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$ east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general southern boundary line of said block "H" the following seven courses and distances; north $6^{\circ} 03' 40''$ west 19.70 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet, and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-“A” and all of lot 7 in block “H”, as said lots and block are shown on the map of “Montclair Estates, Oakland, Alameda County, California”, filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And being also a portion of lot 6 in block “G”, as said lot and block are shown on the map of “Montclair Acres, Oakland, Alameda County, California”, filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

This property is subject to a reserve for public utilities, five feet in width and running across the length of the property, which reserve was granted to the City of Oakland.

5. Warren C. Graham and Agnes B. Graham do not claim any present interest in the above property and they deny having any interest therein when the Federal tax liabilities arose.

6. Defendants Catherine Young Cobb and J. Preston Cobb are husband and wife. At the time this action was commenced they resided in the City of Oakland, County of Alameda, State of California.

7. Catherine Young Cobb is the daughter of Warren C. Graham. Legal title to the above-described property is in her name. A deed transfer-

ring the above-described real property from Frank Hansen, a single man, to Catherine Young Cobb, a married woman, was recorded in Alameda County on May 28, 1948. A deed transferring the above-described property from Warren C. and Agnes B. Graham, his wife, to Frank Hansen, a single man, was recorded in Alameda County on December 7, 1946. A deed transferring the above-described property from Carroll McKee and Opal Leota McKee, his wife, to Warren C. Graham and Agnes B. Graham was recorded on October 16, 1946.

8. The conveyance of the above-described real property from Warren C. Graham and Agnes B. Graham to Frank Hansen was a sham. The transfer was for the purpose of avoiding and defeating Federal tax liens. Warren C. Graham and Agnes B. Graham did not intend to divest themselves of the beneficial interest in the property and Frank Hansen did not intend to take the beneficial interest. Frank Hansen received title to the property and held title to the property for Warren C. Graham and Agnes B. Graham.

Defendant Frank Hansen was employed by the Graham Ship Repair Company. He was in 1945, 1946, 1947 and 1948 closely associated with Warren C. Graham. Other property owned by Warren Graham had been transferred to Frank Hansen and in previous court proceedings these transfers had been set aside. Frank Hansen's deposition was taken and was received in evidence along with various other exhibits. The substance of the deposition

and attached exhibit, with respect to the conveyance of the property to Frank Hansen, is that the purpose of such transfer was to avoid Federal tax liens. Frank Hansen did not otherwise plead or appear and his default is entered.

9. The conveyance of the above-described property from Frank Hansen to Catherine Young Cobb was a sham and made for the same purpose as was the conveyance from the Grahams to Hansen, namely, to conceal the Grahams' interest therein. In any event the transfer to Catherine Young Cobb was no more than a gift.

10. The defendant, State of California, is a corporate body politic. The State of California, through its subdivisions, the Department of Employment and the Board of Equalization, claims an interest in the above-described property by virtue of certain recorded certificates of lien. The facts relative to these claims, as set out in a stipulation of facts filed with the Court on August 16, 1955, are as follows:

a. On July 16, 1947, there was recorded in Alameda County Certificate of lien of the Department of Employment, No. 3193. On May 21, 1952, the above Certificate of Lien was rerecorded as Certificate of Lien No. 51607. These certificates covered unemployment insurance taxes (contributions) assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from April 1, 1946, to

March 31, 1947. The liability, computed as of July 31, 1955, covered by the above-designated certificates is shown in the following table:

Contributions	\$ 6,190.40
Interest to date of recordation	316.82
Penalties	1,181.15
	<hr/>
Amount of Lien	\$ 7,688.37
Less credit adjustment	51.21
	<hr/>
	\$ 7,637.16
Additional interest to date of record-	
ation of Extension of Lien	1,782.10
	<hr/>
Amount of Extension Lien #51607..	9,419.26
Additional interest to 7/31/55.....	1,167.57
	<hr/>
Present Amount Due on Lien...	\$10,586.83

b. On May 3, 1948, there was recorded in Alameda County Certificate of Lien of the Board of Equalization, No. 9210. On April 7, 1953, this Certificate of Lien was rerecorded. These certificates covered sales and use taxes, penalties and interest assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from January 1, 1945, to May 15, 1947. As of July 31, 1955, the amount due and delinquent was \$2,293.28.

c. On June 15, 1949, there was recorded in the County of Alameda Certificate of Lien of the Board

of Equalization, No. 10672. This Certificate of Lien was rerecorded on May 12, 1954. The Certificate covered sales and use tax, penalties and interest assessed against Warren C. Graham and Agnes B. Graham, doing business as California Plants Distillation Company for the period from March 1, 1947, to November 30, 1947. The amount due and delinquent as of July 31, 1955, is \$3,639.20.

d. On January 24, 1950, there was recorded in Alameda County a Certificate of Lien of the Department of Employment, No. 25234. On December 7, 1954, this Certificate of Lien was rerecorded as Certificate No. 79158. These certificates covered unemployment insurance taxes (contributions) assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from April 1, 1946, to December 31, 1946. The tax liability, computed as of July 31, 1955, is shown in the following table:

Contributions	\$ 1.05
Interest to date of recordation22
Penalties	113.11
<hr/>	
Amount of Lien	\$114.38
Additional interest to date of recorda-	
tion of Extension of Lien.....	.32
<hr/>	
Amount of Extension Lien #79158....	\$114.70
Additional interest to 7/31/5503
<hr/>	
Present Amount Due on Lien	\$114.73

11. Defendant County of Alameda and defendant City of Oakland assert claims against the above-described property. The lien claims of both these defendants were set forth in a single stipulation which was filed with the Court. These claims are for property taxes, penalties and interests levied for the following fiscal years and in the following total amounts:

(a) Fiscal Year commencing July 1,	
1946	\$838.92
(b) Fiscal Year commencing July 1,	
1947	808.50
(c) Fiscal Year commencing July 1,	
1948	848.85
(d) Fiscal Year commencing July 1,	
1949	754.29
(e) Fiscal Year commencing July 1,	
1950	733.37
(f) Fiscal Year commencing July 1,	
1951	639.24

Catherine Young Cobb made payments on the liabilities listed above on the following dates and in the following amounts:

(a) March 31, 1953	\$ 925.63
Interest	167.35
(b) April 20, 1954	\$ 925.63
Interest	171.61
(c) April 22, 1955	\$1,019.57
Interest	107.92

The present outstanding balance of these liens as of August 16, 1955, is \$835.70.

Conclusions of Law

1. The liens of the United States, for tax liabilities assessed against Warren C. Graham and Agnes B. Graham for 1942 income and excess profits taxes, for 1945 and 1946 withholding and insurance contribution taxes and for 1945 and 1946 income taxes, arose, when on the following designated dates, the Collector received the assessment lists covering these assessments: (a) March 26, 1945, (b) May 14, 1945, (c) December 6, 1946, and (d) August 1, 1949.

2. When these liens arose they attached to all property and rights in property owned by Warren C. Graham and Agnes B. Graham; and, to all after-acquired property of these taxpayers. These liens, when they arose were good against all persons except mortgagees, pledgees, purchasers and judgment creditors. Neither Catherine Young Cobb or any of the other claimants come within the four categories of persons named-above; and, in any event, the liens of the United States which arose on March 26, 1945; May 14, 1945, and December 6, 1946, were recorded and became good even against the four classes named-above (before the property here involved was deeded to Catherine Young Cobb.)

3. The Federal tax liens that arose on March 26, 1945 and May 14, 1945, attached to the property here involved when that property, by deed recorded October 16, 1945, was acquired by Warren C. Graham and Agnes B. Graham. The Federal tax liens

of December 6, 1946, and August 1, 1949, attached to this particular property when they arose.

4. The United States of America, the State of California, the County of Alameda and the City of Oakland are entitled to judgments on their liens in the following order which shall constitute the priority of the liens:

a. In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from March 26, 1945, until paid;

b. In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from May 14, 1945, until paid;

c. In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per cent per annum on the sum of \$337,918.01 from December 9, 1946, until paid;

d. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$6,145.17 until paid;

e. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from Au-

gust 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid;

f. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

g. In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from August 1, 1949, until paid;

h. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

i. In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of \$835.70, plus interest from August 16, 1955, according to law.

5. The conveyance from Warren C. Graham and Agnes B. Graham to Frank Hansen, and the conveyance from Frank Hansen to Catherine Young Cobb were complete shams and were frauds on the creditors of Warren C. Graham and Agnes B. Graham. These conveyances are set aside and the property here involved is to be sold by the United States Marshal for the Northern District of Cali-

fornia free and clear of these conveyances and any other encumbrances except the reservation for public utilities granted to the City of Oakland. The proceeds of this sale, after deducting the Marshal's costs and commission, are to be applied in payment of the lien claims in accordance with their respective priorities as set out above. Any amounts so paid will be credited against the above judgments.

Dated: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Service of copy attached.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 30821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, State of California, a Municipal Corporation; CROFTS & ANDERSON, a Co-Partnership, et al.,

Defendants,

vs.

STATE OF CALIFORNIA,

Plaintiff in Intervention.

JUDGMENT

The above-entitled matter coming on regularly to be heard before this Court on the 17th day of August, 1955, without a jury, and the plaintiff appearing by its attorneys Lloyd H. Burke, United States Attorney; Charles Elmer Collett, Assistant United States Attorney, and Alonzo W. Watson, Jr., attorney in the office of the Regional Counsel, Internal Revenue Service, the defendants Warren C. Graham, Agnes B. Graham, Catherine Young Cobb

and J. Preston Cobb appearing by their attorneys Wagener & Brailsford, and the Court have heard the evidence and received and considered the stipulations as to facts entered into by the aforementioned plaintiffs and defendants through their respective attorneys and the defendants, the State of California, the County of Alameda and the City of Oakland, through their respective attorneys; and the Court being fully advised in the premise; now, in accordance with the order of the Court entered on August 26, 1955, it is hereby

Ordered, Adjudged and Decreed:

1. That the plaintiff the United States of America, the plaintiff in intervention, the State of California, and the defendants, County of Alameda and City of Oakland, be awarded judgment on their liens in the following order, which order shall constitute the priority of the liens.

(a) In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from March 26, 1945, until paid;

(b) In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from May 14, 1945, until paid;

(c) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per

cent per annum on the sum of \$337,918.01 from December 9, 1946, until paid;

(d) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$6,145.17 until paid;

(e) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid;

(f) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

(g) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from August 1, 1949, until paid;

(h) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

(i) In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of

\$835.70, plus interest from August 16, 1955, according to law.

2. That the conveyances of record to Frank Hansen recorded on December 7, 1946, and Catherine Young Cobb recorded on May 28, 1948, are null and void.

3. That the proceeds of the sale of the real property, which is the subject of this action and which is to be sold pursuant to the decree of sale entered this same date, shall be distributed to the judgment creditors according to their priorities as set forth above.

Dated: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

Entered September 14, 1955.

[Title of District Court and Cause.]

DECREE OF FORECLOSURE AND ORDER OF SALE

The above-entitled matter coming on regularly to be heard before the Court on the 17th day of August, 1955, without a jury, and the plaintiff appearing by its attorneys Lloyd H. Burke, United States Attorney; Charles Elmer Collett, Assistant United States Attorney, and Alonzo W. Watson, Jr., attorney in the office of the Regional Counsel,

Internal Revenue Service; the defendants Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb appearing by their attorneys Wagener & Brailsford; and the Court having heard the evidence and received and considered the stipulations as to facts entered into by the aforementioned plaintiffs and defendants through their respective attorneys and the defendants, the State of California, the County of Alameda and the City of Oakland through their respective attorney and the Court being fully advised in the premises; now, in accordance with the Order of the Court entered on August 26, 1955,

It Is Hereby Ordered, Adjudged and Decreed that the prayer of the United States of America that its liens described in its complaint be foreclosed is granted.

It Is Further Ordered, Adjudged and Decreed that the property referred to in the complaint and hereinafter particularly described, be sold at public auction for cash according to law, that the plaintiff or any of the parties to this suit may purchase at said sale. That Frank O. Bell, United States Marshal for the Northern District of California, is hereby appointed to act as commissioner to sell said real property; that out of the proceeds of said sale the commissioner retain his fees, disbursements and commissions of said sale, and pay first the following sums to the United States of America, the sum of \$8,068.86, plus interest from March 27, 1945, to August 26, 1955, in the amount of \$5,042.48; the

sum of \$16,773.02, plus interest from May 21 1945, to August 26, 1955, in the amount of \$10,329.19; the sum of \$365,040.50, plus interest from December 9, 1946, to August 26, 1955, in the amount of \$190,841.17, and that the commissioner take and return to this Court receipts for the amounts so paid, to be presented to this Court together with his return and report of sale, and any surplus moneys which may remain after applying the proceeds of said sale, said surplus if any shall be applied as follows; first, to the State of California the sums of \$16,519.31 plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$9,243.06 until paid; second, to the United States, the sum of \$1,139,375.68 plus interest from August 1, 1949, to August 26, 1955, in the amount of \$414,857.61; third, to the State of California, the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid; fourth, to the County of Alameda and the City of Oakland, the sum of \$835.70, plus interest thereon according to law from August 16, 1955.

It Is Further Ordered, Adjudged and Decreed that the defendants Warren C. Graham and Agnes B. Graham, Frank Hansen and Catherine Young Cobb, and all persons having liens subsequent upon the property herein described and their personal representatives, be forever barred and foreclosed of any right or claim to and from all equity of redemption in said property and every part thereof; that the commissioner shall execute a deed to the purchaser or purchasers at such sale.

The property hereinabove referred to is particularly bounded and described as follows:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H", as said drive, lot and block are shown on the map of "Montclair Estates", hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left with a radius of 185.00 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres", hereinafter referred to, the four following courses and distances: easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ west 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$ east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general

southern boundary line of said block "H", the following seven courses and distances: north $6^{\circ} 03' 40''$ west 19.07 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-"A" and all of lot 7 in block "H", as said lots and block are shown on the map of "Montclair Estates, Oakland, Alameda County, California", filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And being also a portion of lot 6 in block "G", as said lot and block are shown on the map of "Montclair Acres, Oakland, Alameda County, California", filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

Date: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, and to
the United States of America and Lloyd H.
Burke, United States Attorney:

You Will Please Take Notice that Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb, defendants in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment herein rendered and entered in said United States District Court for the Northern District of California, Southern Division, on the 14th day of September, 1955, in favor of the United States of America, and against said defendants and each of them, and from the whole of said judgment.

Dated: October 13, 1955.

WAGENER, BRAILSFORD &
KNOX;

/s/ AUGUSTIN DONOVAN,
Attorneys for Said
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 14, 1955.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, and to
the United States of America and Lloyd H.
Burke, United States Attorney:

You Will Please Take Notice that Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb, defendants in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment herein rendered and entered in said United States District Court for the Northern District of California, Southern Division, on the 14th day of September, 1955, in favor of the United States of America, and against said defendants and each of them, and from the whole of said judgment, and from the Decree of Foreclosure and Order of Sale made in the above-entitled case by said Court, and entered on the 14th day of September, 1955.

Dated: October 26, 1955.

WAGENER, BRAILSFORD &
KNOX;

/s/ AUGUSTIN DONOVAN,
Attorneys for Said
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 26, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 30,821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, State of California, a Municipal Corporation,

Defendants.

Before: Hon. Oliver D. Hamlin, Judge.

REPORTER'S TRANSCRIPT

Wednesday, August 17, 1955—10:00 A.M.

Appearances:

ALONZO W. WATSON, JR., ESQ.;

C. ELMER COLLETT, ESQ.,

For the Plaintiff.

WAGENER & BRAILSFORD, by

SAMUEL H. WAGENER, ESQ., and

PHILIP KNOX, JR.,

For the Defendant.

The Clerk: United States v. Warren C. Graham, et al.

Will respective counsel please state their appearances for the record?

Mr. Watson: Alonzo W. Watson, Jr., for the United States. Mr. Collett, United States Attorney, will be with me on this job.

Mr. Wagener: Samuel H. Wagener for the defendants. Mr. Knox, Jr., will be with me later. He was detained in Superior Court this morning.

The Court: All right. Proceed.

Mr. Watson: This is an action to reduce federal tax liens to judgment.

It is also an action to collect part of those federal tax liens by having this Court order a foreclosure sale of certain property located in Alameda County, and also ordering the proceeds of that sale paid in partial satisfaction of the liens of the United States.

The federal tax liens here in question arose against defendants Warren Graham and his wife, Agnes B. Graham, because of assessments made in 1945, 1946, 1947 and 1949.

The Court: May I interrupt for a moment? Mr. Wagener, did you say you were representing the defendants?

Mr. Wagener: The defendants Warren C. Graham and——

The Court: Who is representing the other defendants?

Mr. Wagener: I also represent the defendants Cobb. [3*]

The Court: I see a lot of defendants here named. Do they not appear—County of Alameda, State of California; State Board of Equalization, City of Oakland?

Mr. Wagener: They have appeared by stipulation, I believe.

Mr. Watson: Yes, your Honor, there are stipulations on file by the State of California, and stipulations that will be filed. In fact, we will file the stipulations of the City of Oakland and County of Alameda at this time.

The Court: What do the stipulations say?

Mr. Watson: Those stipulations set out the nature of their tax lien claims against the defendants Warren Graham and Agnes Graham. In the stipulations filed by the county—it is a joint stipulation by the county and city. They there describe the nature of their liens, give the dates those liens arose, or supposedly arose, and set out the amounts of liens.

The Court: Are they still actively litigating for their liens?

Mr. Watson: Yes. It is my understanding that they would like this Court to determine the priorities on the basis of this stipulation.

The Court: Well, I will look at it. Go ahead.

Mr. Watson: Under our allegations the total amount of the federal tax liens is well over a million dollars. [4]

The property here involved consists of houses and lots and household furnishings. At the present time legal title to this property purportedly vests in

Catherine Young Cobb. It is the position of the United States that this property here involved was transferred to Catherine Young Cobb burdened with their federal tax liens, and that those liens are a prior claim on this property.

It is also our position that the series of transfers that brought this property to defendant Catherine Young Cobb were fraudulent and were made with the intent to place this property beyond the power of seizure by the United States, so that the United States could not collect its just tax claims against defendants Warren C. Graham and his wife, Agnes B. Graham.

These defendants, Warren Graham and Agnes Graham, in their pleadings contend that our liens did not attach to the property while they owned it. Defendant Catherine Young Cobb claims that her right, title and interest to this property is not subordinate to the interest of the United States in that property. In other words, she says her rights are superior to ours.

As we have already stated, the State of California and City of Oakland and County of Alameda are in here claiming some right to the property by virtue of liens they have assessed against the defendants Warren and Agnes Graham. They are [5] protecting their position by filing the stipulation setting out the nature of their liens.

The other defendants are now eliminated. Some of them have filed disclaimers. Others haven't appeared. We have taken the deposition of defendant

Frank Hansen and later we will offer that in evidence.

Our evidence will establish the federal tax liens for the years 1945, 1946, 1947 and 1949, and it will also show the dates those liens arose and the present outstanding balance of all those liens.

Now, our evidence will further show with respect to the first of these tax liens in 1945, that they arose in March of 1945; that the second tax liens arose in May of 1945, so that when defendants Warren Graham and his wife, Agnes B. Graham, took title to this property by a deed recorded October 16, 1945, our liens then attached to that property.

We will show also with our evidence that these liens were recorded with the Recorder over in the County of Alameda on August 10 of 1946, and that that August 10th date is about four or five months before a deed transferring the property to Frank Hansen was recorded over in Alameda, and more than two years before, or almost two years before the deed was recorded on May 28th of 1948 transferring the property to defendant Catherine Young Cobb.

Our evidence will also establish that these [6] transfers were made at a time when they would have left the defendant Warren Graham without sufficient money to pay his just debts, and that that was part of the general scheme or plan on his part to defraud his creditors and to place this property where it could not be seized to pay his tax claims.

One further point: We will show that collection

waivers were secured with respect to these 1945 assessments, and that those collection waivers extended the right of the United States, or protected the rights of the United States up to and beyond the period of this suit.

Mr. Wagener: May I state our position, your Honor?

The Court: Yes.

Mr. Wagener: Our position is that the deed referred to by counsel, which went to a trustee for Catherine Young Cobb, the daughter of Mr. Graham, and subsequently to her, was executed on August 6, 1946, the date it bears; that Mr. Graham at that time was solvent; that he deeded the property to his daughter partly in consideration for the cancellation by her of a note which she held of his, and partly in consideration for the love and affection which he bore her as his daughter.

The deed, the agreement for the transfer of the property, was made in May of 1946. The deed was executed and delivered to Frank Hansen as trustee on August 6th, 1946. While it was not recorded until December 7, 1946, it is our position that it takes precedence over the lien for taxes which was recorded [7] on August 10, 1946, because under the California recording statutes, Civil Code 1214 and 1215, a lien claimant is not one of the persons who is protected against a prior unrecorded deed.

Subsequently the property was conveyed by deed from trustee Frank Hansen to Catherine Young Cobb, the daughter of Mr. Graham.

As I see the situation, your Honor, the issues

could narrow themselves down to this fact: That if Warren C. Graham was solvent at the time he made the deed, the United States is not protected against the unrecorded deed, and then the deed was good against this lien and against all the liens of the government.

However, if it becomes an issue in the matter, it becomes important to determine whether there is a priority between that one tax lien, then we do dispute and have in our answer disputed the tax lien of the government filed in 1946 on the basis that it was not what it purports to be, a valid transferee tax; and secondly, on the basis that it was filed beyond the period specified in limitations.

We have pleaded the statute of limitations of the Internal Revenue Code. While it is true there was a waiver executed, it is our position that was executed under duress, and we will be obliged to produce proof on that point should it become [8] necessary.

The Court: Do you contest the reducing of the federal tax liens to judgment for the years 1945, 1947, 1949?

Mr. Wagener: The 1945 one we do contest.

The Court: 1945 and 1946?

Mr. Wagener: The ones set forth in Plaintiff's first and second causes of action, I believe.

The Court: The reason I ask that, you mentioned the year 1946.

Mr. Wagener: It was recorded in 1946. The lien was recorded October 10th, 1946.

There is a tax lien against Warren C. Graham

which is covered in plaintiff's first cause of action starting on page five of the government's original complaint; and the second cause of action, which is for a similar tax against the defendant Agnes B. Graham, which is set forth in the second cause of action commencing on page six of the original complaint.

The Court: That is the same lien, though?

Mr. Wagener: Yes, your Honor. And the fifth cause of action purports to be a restatement of the same tax in amount and date, and we contest that one, also.

The rest of them we do not contest as to reducing them to judgment.

The Court: So that actually the one you are contesting is the one recorded in 1946?

Mr. Wagener: That is correct. [9]

The Court: Which is set forth in the first and second causes of action. And you say there is a restatement of that in the fifth cause of action?

Mr. Watson: That is right. Our fifth cause of action under the original complaint is in fact a duplication of our first and second, and we are dropping that out.

The Court: You are dropping the fifth?

Mr. Watson: Yes.

The Court: That leaves the third and fourth causes of action which are not being contested, is that right?

Mr. Wagener: We don't know the facts with regard to the assessment. If they have the records to establish that the liens were filed and so on, we

cannot contest it. We have denied them on information and belief, and allegations about the receipt of the liens, and so on.

The Court: All right. How long do you gentlemen think this case will take?

Mr. Watson: Well, your Honor, we have a witness here that can identify our various documents that show the establishment of our liens. But if Mr. Wagener is willing, we can stipulate to the receipt of these documents in evidence, you will have a chance to look them over. Or we can call our witness who is familiar with them and we can identify them for the Court.

We have documents for each cause of action that shows [10] the time the lists were made out, the time the Collector received them. As your Honor probably recalls, the lien arises at the time the Collector received the assessment list carrying the assessments.

The Court: Don't assume too much, Mr. Watson, about my knowledge about taxes because I have not tried one of these cases before.

Mr. Watson: Maybe your Honor would appreciate it if I would recapitulate that briefly?

The Court: Yes.

Mr. Watson: Under the law that was applicable at this time, which was the Internal Revenue Code of 1939, it was Section 3670 that gave the United States a lien for taxes, and that lien attaches to all property and rights in property belonging to a person who has an outstanding unpaid tax liability.

Section 3671 of the Internal Revenue Code of

1939 provides that the lien arises when the Collector receives the assessment list carrying these assessments. They are assessments of outstanding taxes.

Section 3672 or 3673 provides that this lien that arises when the Collector receives the assessment list is good against all except mortgagees, pledgees, purchasers or judgment creditors.

The word "purchaser" has been defined by courts to mean [11] a person who pays present consideration, full value. And our lien is good against all those classes of persons. And it may become important here because it looks as if they may maintain that defendant Catherine Young Cobb is a purchaser or in one of those four categories.

But in any case, this same provision of the Code provides that once our notices of tax liens are recorded, those liens are good against even those four classes of persons; and it is good against anyone from that time on.

So what we have in this situation is that our liens for 1945 arose in March and May of 1945 when the Collector received the lists carrying those assessments.

The Court: May, 1945?

Mr. Watson: The first is March—March 26th of 1945. That was the one against defendant Warren C. Graham. The one against his wife, Agnes B. Graham, arose on May 14th when the Collector in New York received the assessment list. Those liens were good at that time, under the Revenue Code,

against all except those four classes of persons that I have enumerated.

On August 10th when our notices of liens were actually recorded covering both the March and May, 1945, assessments, then those liens became good against the world by operation of Section 3672.

The Court: That is August 10th, 1946? [12]

Mr. Watson: Yes. See, those were transferred out to California for collection. The assessments were actually made in New York, and then because the Grahams had property out here and those liens attached to property no matter where located, the Collector in New York transferred them out here to the San Francisco Collector, and the San Francisco Collector scheduled those assessments for collection here, and after he scheduled them, he then filed these notices of lien in Alameda County.

That is what these documents we have here are concerned with: the assessment list, the transfer forms from New York to San Francisco, the notices of tax liens.

We have the collection waivers that were signed. And we can introduce at this time the requests for admissions and the answers to those requests that are on file where the defendants, the two Grahams, admit these collection waivers carry their signature but claim that those signatures were taken under duress and that the date has been changed on them. We are in a position to prove, if they bring forward any proof, that that is not so.

The Court: All right.

Mr. Watson: Then we have as the last document a summary of all these things. That is what we call

our Assessment Payment Certificate. It shows all relevant dates and the present outstanding balance. We have two for each of our [13] causes of action.

Shall we mark these and introduce them in evidence, your Honor?

Mr. Wagener: I am not familiar enough with them. I would prefer that the witness be called to identify them.

The Court: All right.

Mr. Watson: Call Mrs. McGregor.

HILDA E. MCGREGOR

called as a witness on behalf of the plaintiff; sworn.

The Court: State your full name, please.

The Witness: Hilda E. McGregor.

Mr. Watson: Your Honor, could we have these documents marked for identification?

The Court: All right. What is the first one, Mr. Watson? Identify them for the record.

Mr. Watson: Well, the document bears the date—Well, I can ask Mrs. McGregor to identify them. First, let me ask her a few preliminary questions.

Direct Examination

By Mr. Watson:

Q. Mrs. McGregor, where are you presently employed?

A. At the District Director of Internal Revenue.

Q. How long have you been so employed?

A. Since November 1, 1944.

(Testimony of Hilda E. McGregor.)

Q. And what services do you perform over there? [14]

A. My present assignment is, I am assistant supervisor at the adjustment unit.

Q. Will you explain a little about that particular job? What do you do in that position?

A. This is a position in the accounting branch which comes directly under the Collection Division. Our function in the adjustment unit is to review accounts as to the status of collection, the making efforts to collect money. We check for liens; we adjust overpayments; we do what we can about underpayments. Seems to be sort of a troubleshooting unit.

Q. Mrs. McGregor, in connection with your work have you become familiar with the accounts of defendants Warren C. Graham and Agnes B. Graham?

A. Yes.

Q. I will show you the government's proposed Exhibit 1 and ask you if you will identify those documents.

A. This is a New York assessment list dated March the 23rd of 1945. It records Warren C. Graham as transferee of a 1942 liability. It says that he is transferee of the former Kincaid Company, Inc.

Q. And it gives the amount, too, does it not?

A. Oh, yes, it gives the amount that he is assessed and is due. It is an income tax assessment.

Q. And there is a second document. What is that?

(Testimony of Hilda E. McGregor.)

A. This is known as our Form 23-C. That is the assessment [15] certificate that was submitted to Washington and the Bureau stating that we had proposed these assessments and the Commissioner——

The Court: By “we” you mean who?

A. The local office in 1945 did propose an assessment, recorded it and submitted totals thereof on this certification sheet, at which time the Commissioner in Washington, D. C., would sign them, and that made it a valid document.

The Court: So that we may have this for the record, when you say “the local office” and speak of the Commissioner, will you give them whatever title they have so that the record has the proper designation?

The Witness: I am sorry. The local office I meant in this case, of course, was New York. He was known as the Collector of Internal Revenue. He was responsible, with his various functions, for preparing these assessments. They were mailed to Washington, D. C. The Commissioner of Internal Revenue would sign them.

Q. (By Mr. Watson): Then what did he do with them after he signed them?

A. Of course, after being signed, they were returned to us to be——

The Court: By “us” you mean who?

A. In this case I mean again it would be New York. Each Collector of Internal Revenue in a specific district prepares [16] records which he for-

(Testimony of Hilda E. McGregor.)

wards to Washington, and the Commissioner signs them after which they are returned to each specific district. In this case this whole transaction was between the Second District in New York and Washington, D. C.

Q. (By Mr. Watson): Mrs. McGregor, I will show you——

The Court: Let's mark that exhibit you have been talking about Government's 1 for Identification so that we may have that in the record.

Mr. Wagener: Will you wait on the next one until I have had a chance to examine it?

The Court: Just mark it for identification.

(Whereupon, the document referred to was marked United States Exhibit No. 1 for Identification.)

The Court: All right; proceed.

Mr. Watson: I believe counsel wanted me to wait.

The Court: Yes, give him an opportunity to look at that.

Mr. Watson: May this be received in evidence, then?

The Court: That was marked Government's Exhibit 1.

Q. (By Mr. Watson): Mrs. McGregor, I show you Government's Exhibit—proposed Exhibit 2, which are photostats of what purport to be tax transfer vouchers. Will you look at those and ex-

(Testimony of Hilda E. McGregor.)

plain what they are? There are two documents there.

A. These are photostatic copies of a standard government form, No. 514. It is a tax transfer voucher. In this instance the Collector of the Second District of New York [17] transferred the liability of the tax to the San Francisco district.

The Court: Explain that a little bit more to me, please.

A. Yes. This is in a slightly revised form, the same liability we were talking about a minute ago. However, it has been recorded on this standard form from one collection district to another, and it is mailed through the mails setting forth the date of doing this and the date it is received. In this instance it was received in the Collector's office in San Francisco. When he received this, it is recorded here and becomes a permanent part of our records.

The Court: By "recorded", you mean what?

A. Well, I mean listed with a typewriter in a book.

The Court: You don't mean recorded in the County Recorder's office?

A. No.

The Court: But for the purpose of collection, the item is transferred from one district to another, is that right?

A. That is right.

The Court: Because of what? Because it is in the Second District or has property in the Second District or what?

(Testimony of Hilda E. McGregor.)

A. It may be transferred for any reason. Generally, it is because the taxpayer has moved from one district to another.

The Court: All right. [18]

Mr. Watson: I ask that these two tax transfer vouchers be received in evidence as Government's Exhibit 2.

The Court: They may be so marked.

(Whereupon, tax transfer vouchers were marked United States Exhibit No. 2 and received in evidence.)

Q. (By Mr. Watson): Mrs. McGregor, I show you what purports to be Government's Exhibit 3, which is a photostat of a notice of tax lien under the revenue laws, and ask you if you will explain that document to the Court.

A. Well, it is a standard government form, No. 668.

The Court: 668?

A. 668. "Notice of Tax Lien Under Internal Revenue Laws." It bears date of July 26, 1946, and it was recorded August 10, 1946; recorder's series TT-70256, dated March 15, 1954, Thomas W. Fitzsimmons, County Recorder of Alameda County.

The Court: That is really a certification?

A. Yes.

The Court: It is recorded in Alameda County?

A. Yes.

The Court: About August 10, 1946?

Mr. Watson: That is correct, your Honor. I

(Testimony of Hilda E. McGregor.)

would like permission to offer this in evidence as Government's Exhibit 3.

The Court: It may be so marked.

(Whereupon, notice of tax lien was received in evidence and marked United States Exhibit No. 3.) [19]

Q. (By Mr. Watson): Mrs. McGregor, I show you Government's Exhibit 4, which purports to be a tax collection waiver signed on November 21st, 1950, by Warren C. Graham. Would you explain that to the Court, please?

A. It is a standard government form 900, tax collection waiver. It is an agreement between Warren C. Graham of the Graham Ship Repair Company—Shall I read it all?

The Court: What date is it?

A. Oh, this was signed December 31st, 1952. No, just a moment. November 21st, 1950.

The Court: Well, I think that sufficiently describes it. Show it to counsel.

Mr. Watson (Handing document to counsel): Perhaps I should at the same time offer for evidence the request for admissions propounded by the United States to defendant Warren C. Graham in connection with these particular waivers. They are now on file with the Court. I have copies here, and we can mark it as an exhibit and enter it now, if you like, or withdraw it from the file.

The Court: Don't you think that would be confusing? Let's get this document first and then we will see what else you have to offer?

(Testimony of Hilda E. McGregor.)

Mr. Watson: We offer this as Government's Exhibit 4.

The Court: It may be so marked.

(Whereupon, tax collection waiver was received [20] in evidence and marked United States Exhibit No. 4.)

The Court: Now, do you contend you have another document there which refers to this Exhibit 4?

Mr. Watson: Yes, your Honor. The original is actually on file with the Court. I have here our request for admissions proposed to the defendant Warren C. Graham; a photostatic copy of tax collection waiver, and answers of defendant Warren C. Graham to plaintiff's request for admissions.

The Court: May I see that? Let's see if we can clarify it. Have you seen this, Mr. Wagener?

Mr. Wagener: Yes, I have, your Honor.

The Court: Well, I suggest that that be marked Exhibit 4-A so that we tie it in with your tax collection waiver.

Mr. Watson: All right.

(Whereupon request for admission, photostatic copy of tax collection waiver and answers to requests for admissions were received in evidence and marked United States Exhibit No. 4-A.)

Q. (By Mr. Watson): Mrs. McGregor, I show you Plaintiff's Exhibit 5 and ask you to explain that document to the Court.

A. This is a standard form 899, certificate of

(Testimony of Hilda E. McGregor.)

assessments and payments. This reflects the liability of Warren C. Graham, income tax liability for 1942, gives the liability and outstanding balance, which was now \$8,068.68. It reflects [21] all the actions that have taken place on the various assessment sheets. It is a resume, actually, of all transactions that have happened to the liability.

The Court: From what date to what date?

A. The assessment list was signed March 23rd, 1945. It was received back in New York from Washington, March 26th, 1945.

The Court: That doesn't answer my question. Well, all right. Go ahead.

Mr. Wagener: I would object to the introduction of this in evidence, your Honor, as being merely a self-serving review by the Department of Internal Revenue of all the various acts. Each one of them appears to be established therein to a certain extent and can be established independently. I would object to it as being incompetent, irrelevant and immaterial, not having any probative value, and being a self-serving statement.

The Court: Is it in the nature of a chart prepared by the Bureau, counsel?

Mr. Watson: No, your Honor, this document picks up all the entries that the District Director or the then Collector's office, makes in respect to a particular account.

It shows not only when the list was signed but when it was returned to the Collector and received by him. It shows when there was a demand made

(Testimony of Hilda E. McGregor.)

for the taxes. It shows when the claim was recorded and shows any payments, and also the [22] outstanding balance.

It is the document that is really a statement of account for the particular taxpayer. It gives the whole picture of the taxpayer's account. In fact, I believe this document alone is enough to show the nature of the account.

The Court: When was that prepared?

Mr. Watson: This was prepared July 22nd, 1955, at our request. It is signed by Glen Jamison, certified a true and correct record of the account of Warren C. Graham. If counsel insists on its being out, we are going to have more documents that show outstanding liabilities that are considerably in excess of the amounts actually now outstanding.

Mr. Wagener: If your Honor please, because of the nature of our defense to this transferee tax, I can't permit an item like this to go in without objection because it assumes a lot of things that we are not familiar with and which have not been testified to by this witness. It is merely a self-serving summary by the Department of Internal Revenue.

The Court: Well, I will mark it Exhibit 5 for Identification and we can pass on the admissibility later. It may be something that is just prepared for the convenience of counsel for trial purposes, which might be in the nature of a chart prepared by an accountant. Is that it?

Mr. Watson: No, your Honor. It is our view that this is a vital document because it picks up

(Testimony of Hilda E. McGregor.)

all the data from [23] these underlying documents, and, in addition, shows the payments that have been made on the account.

Without this you don't have any record of the payments that have been credited to the taxpayer's account, so your records are not complete without this document. Yet it is in summary form, and, as I say, reflects what is on these previous documents so far as dates received and when liens were recorded.

But it does have that additional, vital information of the present outstanding balance.

The assessments against Warren C. Graham were originally in the amounts of thirty-six hundred some odd dollars, and also the amount of twelve thousand eight hundred and some odd dollars, and in a previous suit we collected some of that and applied it first in payment of the thirty-six hundred some odd dollars and then again to the twelve hundred some odd thousands of dollars. So without the document his accounts would show that he still owes a total of some sixteen thousand, which is not the case. He now owes, under this particular cause of action, only a little over \$8,000.

The Court: With that statement, do you still object to it?

Mr. Wagener: I do, your Honor. This is alleged also, your Honor, to be a transferee's taxes. There is nothing shown there. It is stated this is an income tax. We are [24] contesting this as a valid transferee's tax. We don't consider it as such.

(Testimony of Hilda E. McGregor.)

Mr. Watson: If your Honor please, it is long past the time that you can contest these taxes. We sent notice on that back in 1942. The assessment isn't made until after the time to contest the actual tax liability is past.

Mr. Wagener: That might be as to the defendant Warren C. Graham, your Honor. It isn't as to the defendant Catherine Young Cobb, who is the present record owner of the property.

Mr. Watson: They can't be questioned by anybody now. They are against Mr. Graham, and when he doesn't come in and bring up any defense or object to them, they are established and are on the list of the District Director or the Collector's office as such. Nobody else can challenge them. They are his liability and he didn't challenge them.

The Court: Are all of these documents that are referred to in Exhibit 5 for Identification of record in the office of the Director of Internal Revenue?

The Witness: I don't think I understand.

The Court: There were a number of documents referred to in Exhibit 5 for Identification.

The Witness: Yes.

The Court: Are all of those documents there referred to of record in the office of the Director of Internal Revenue?

The Witness: The first thing it says, "23-C [25] assessment list signed March 23rd, 1945." That is the certification sheet that would be retained in the New York Second District office. However, a mo-

(Testimony of Hilda E. McGregor.)

ment ago I identified the photostatic copy thereof.

The Court: Did you hear my question? Read the question, Mr. Reporter, will you, please?

(Question read.)

The Witness: If I understand that, your Honor, all these items on here represent documents. The original document is in New York.

The Court: I still repeat my same question, madam: Are all of those documents therein referred to of record in the office of the Director of Internal Revenue?

A. Yes, sir. I am sorry. They are on record.

The Court: Now, the ones referred to as assessment list 23-C is here in evidence, is it not?

Mr. Watson: Yes, your Honor.

The Court: Is that right?

Mr. Watson: Yes.

The Court: What about Form 17, First Notice and Demand? Where is that?

Mr. Watson: The first notice and demand was made in New York, and that is annotated on their records.

Q. Isn't that right, Mrs. McGregor?

A. Right. [26]

The Court: Is it noted in any record we now have in evidence?

A. It is imprinted, stamped on the photostatic copy of the assessment list.

(Testimony of Hilda E. McGregor.)

The Court: Of assessment list 23-C?

A. 23-A.

Mr. Watson: That is the list itself. C is the certificate.

The Court: What about Form 69? I am trying to find out where these documents are. Do we have them in evidence? Are they in the San Francisco office? Is there some record of them here?

Mr. Watson: What happens, your Honor, is that these certificates—Well, we have described that.

After the list is received by the Collector, then he makes this notice, or files the first notice and demand, and lists on that the different items in their record.

Over here we have all these things listed as of record, as having been done, and the District Director has certified to the fact that those steps have been taken. It is his certification that his business records show that each of those steps has been taken that that is the history of this account.

The Court: Did you notice the certification at the bottom, Mr. Wagener?

Mr. Wagener: Yes, your Honor, I did. [27]

The Court: In other words, that is a certification that those documents are of record in his office.

Mr. Wagener: Yes, sir.

The Court: For what value it may have, I think it may be admitted into evidence.

Mr. Wagener: Very well.

(Testimony of Hilda E. McGregor.)

The Court: Objection overruled.

(Document entitled "Certificate of Assessments and Payments," admitted into evidence and marked United States Exhibit No. 5.)

Mr. Watson: I would like to renew my request with respect to these documents, that counsel check them over and if they are all right that the Court admit them as our exhibits. They are similar to the others and we would just take up the Court's time.

The Court: Suppose we take a short recess and you show them to counsel during the recess and see what he desires to do.

(Recess.) [28]

Your Honor, during the recess Mr. Wagener and myself have come to an agreement. He has no objection to our exhibits in connection with our second cause of action, with the exception of the tax collection waiver which he would like to have me ask Mrs. McGregor about, and he wishes to preserve his same objection to the certificate of assessment and payment.

The Court: All right.

Mr. Watson: So I would like to offer at this time as Government's Exhibit 6 photostatic copies of the May assessment certificate and May assessment list, and May, 1945, amended assessment certificate.

The Court: Amended certificate?

(Testimony of Hilda E. McGregor.)

Mr. Watson: Yes. There is an original certificate and then an amended certificate.

The Court: Now, all these documents which you are now offering refer to the second cause of action?

Mr. Watson: Yes.

The Court: Why don't we give them a number like—well, mark that 6-A, the next will be 6-B. It refers to the same cause of action.

Mr. Watson: 6-B consists of two tax transfer vouchers.

The Court: Two tax transfer vouchers?

Mr. Watson: Showing the transfer from New York to San Francisco. [29]

The Court: All right, that is 6-B. The first is 6-A.

(Certified copy of assessment certificate was thereupon admitted into evidence as Plaintiff's Exhibit 6-A. Tax transfer vouchers admitted into evidence as Plaintiff's Exhibit 6-B.)

Mr. Watson: 6-C is the notice of tax lien under the Internal Revenue laws that shows a recording date of August 10, 1946.

(Notice of tax lien dated August 10, 1946, was thereupon admitted into evidence as Plaintiff's Exhibit 6-C.)

Mr. Watson: With respect to 6-D—

Q. Mrs. McGregor, I will show you Government's proposed Exhibit 6-D, which consists of two documents, and ask you if you will identify those documents.

(Testimony of Hilda E. McGregor.)

A. Standard form 900, tax collection waiver, dated November 21, 1950. The name is Agnes Bourke Graham.

The Court: Are they both tax collection waivers?

A. Yes.

The Court: Make the earliest one in point of time 6-D.

Mr. Watson: Well, they are both dated November 21st, 1950.

The Court: Both the same date?

Mr. Watson: Yes.

The Court: They may be introduced as one exhibit and [30] marked Exhibit 6-D.

(Two tax collection waivers were thereupon admitted into evidence as Plaintiff's Exhibit 6-D.)

The Court: It is understood that Mr. Wagener is not waiving any defense that he may have as to those tax collection waivers.

Mr. Wagener: That is right, your Honor.

Mr. Watson: Now, the next document is—I don't know how to mark this. This is similar to our other requests for admissions and answers in connection with the tax collection waiver, only these are propounded to Mrs. Graham and answered by her.

The Court: Mark it 6-E, request for admissions directed to Agnes Graham.

Mr. Watson: Well, it actually was made by the United States to Mrs. Graham and answered by her.

(Testimony of Hilda E. McGregor.)

This was after the suit was filed and was done on the part of the United States.

The Court: The answer was by Agnes Graham?

Mr. Watson: Yes.

(Request for admissions directed to defendant Agnes B. Graham was thereupon admitted into evidence as Plaintiff's Exhibit 6-E.)

Mr. Watson: 6-F consists of two certificates of assessments and payments with respect to Mrs. Graham's tax liabilities [31] arising out of the 1945 assessment, and it shows all the relevant data and the outstanding balance on those assessments.

Mr. Wagener: To which I make the same objection as to the one with respect to Mr. Graham, your Honor.

The Court: Yes. Overruled. It may be marked Exhibit 6-F.

(Certificate of assessments and payments directed to Agnes B. Graham was thereupon admitted into evidence as Plaintiff's Exhibit 6-F.)

Mr. Watson: With respect to the Government's third cause of action, this involves taxes that were assessed against Warren C. Graham and Agnes B. Graham for income taxes, penalties and interest, and the list upon which they are carried is the list designated "July, week of 21st, year 1949." This exhibit consists of assessment certificate and assessment list.

The Court: It may be marked Exhibit 7-A.

(Testimony of Hilda E. McGregor.)

(Certified copies of assessment certificate referred to above was thereupon admitted into evidence as Plaintiff's Exhibit 7-A.)

The Court: That is for 1949?

Mr. Watson: Yes, your Honor. May I say here this is chronologically out of order. That corresponds with our third cause of action. Actually, our fourth cause of action is ahead of this one as far as the time is concerned. [32]

The Court: This is with respect to the third cause of action?

Mr. Watson: Yes. Now, this is Exhibit 7-B, a notice of tax lien under Internal Revenue laws, and the lien was filed of record on December 12, 1949, and it is in connection with this third cause of action.

The Court: 7-B.

(Notice of tax lien, 12/12/49 was thereupon admitted into evidence as Plaintiff's Exhibit 7-B.)

Mr. Watson: Then 7-C is a certificate of assessments and payments with respect to the 1949 assessments, and it shows all the relevant data and the present outstanding balance.

Mr. Wagener: To which we have the same objection, your Honor.

The Court: Overruled. Exhibit 7-C, in evidence.

(Certificate of assessments and payments with respect to 1949 assessments was admitted into evidence as Plaintiff's Exhibit 7-C.)

(Testimony of Hilda E. McGregor.)

Mr. Watson: Now, with respect to the Government's fourth cause of action——

The Court: Are those all the documents for the third cause of action?

Mr. Watson: Yes.

The Court: There are no tax collection waivers in that?

Mr. Watson: No, there are no tax collection waivers on [33] that.

The Court: All right, in reference to the fourth cause of action.

Mr. Watson: Government's Exhibit 8-A consists of Commissioner's Telegraphic Assessment List, dated December 6, 1946. There are five pages in all in connection with this exhibit. They are designated as Special No. 2, and they show tax liabilities assessed against defendants Warren C. Graham and Agnes B. Graham for withholding taxes for the first, second, third and fourth quarters of 1946 and the first quarter of 1947. I believe that is correct.

The Court: That is Exhibit 8-A.

(Commissioner's List, 12/6/49 was thereupon admitted into evidence as Plaintiff's Exhibit 8-A.)

Mr. Watson: 8-B is a notice of tax lien under Internal Revenue laws, and this notice refers to assessments shown in Exhibit 8-A. The notice is dated December 9th, 1946, and it was recorded on December 9th, 1946.

(Testimony of Hilda E. McGregor.)

The Court: 8-B.

(Notice of tax lien, 12/9/46, was thereupon admitted into evidence as Plaintiff's Exhibit 8-B.)

Mr. Watson: 8-C consists of or is a Certificate of Assessments and Payments and consists of four separate pages. These pages show the relevant data with respect to the assessments for 1946 and 1947, and show the payments made in [34] connection with those assessments and the present outstanding balances.

The Court: 8-C.

Mr. Wagener: That one is subject to the same objection, your Honor please.

The Court: All right.

(Certificate of Assessments and Payments for 1946 and 1947 was thereupon admitted into evidence as Plaintiff's Exhibit 8-C.)

Mr. Watson: I believe counsel has some questions he wishes to ask Mrs. McGregor.

Mr. Wagener: Are you through?

Mr. Watson: Yes. Or maybe at this time I ought to make a motion that the pleadings be made to conform to the proof. We have originally somewhat different dates in our complaint and somewhat different total amounts outstanding.

The Court: Well, I will take the motion under submission.

(Testimony of Hilda E. McGregor.)

Cross-Examination

By Mr. Wagener:

Q. Mrs. McGregor, you have introduced or have identified as Exhibit 4 a tax collection waiver signed by Warren C. Graham and purporting to bear date November 21, 1950, is that correct?

A. Yes, sir.

Q. Were you in the office of the Collector of Internal Revenue in San Francisco when that waiver was obtained? [35]

A. I was working in the district—the Collector's office at that time.

Q. Were you familiar with the Graham matter at that time?

A. I certainly had seen the assessments on the books.

Q. Do you have any independent knowledge of your own as to when that tax waiver was received in the Office of the Collector of Internal Revenue in San Francisco?

A. No, sir.

Q. Do you have any knowledge yourself of where it was signed by the defendant Warren C. Graham?

A. No, sir.

Q. You are merely identifying it as a document?

A. Yes, sir.

Q. You have no knowledge as to its execution at all?

A. No, sir.

Q. Would the same be true as to Government's Exhibit 6-D, which consists of two tax waivers pur-

(Testimony of Hilda E. McGregor.)

portedly signed by Agnes Bourke Graham and dated November 21st, 1950?

A. Yes, it would be the same.

Q. Your testimony would be the same as to it?

A. Yes.

Mr. Wagener: That is all. I have no further questions.

Mr. Watson: That is all we have with Mrs. McGregor. I wonder if she could be excused at this time?

Mr. Wagener: No objection. [36]

* * *

WARREN C. GRAHAM

one of the defendants herein, called as a witness in his own behalf; sworn.

The Court: State your name, please.

A. Warren C. Graham.

Direct Examination

By Mr. Wagener:

Q. Mr. Graham, you are one of the defendants in this action? A. Yes, sir.

Q. And you formerly owned the property at 6035 Wood Drive in the City of Oakland, is that correct?

A. Yes, sir.

Q. Catherine Young Cobb, who is one of the defendants, is your daughter, is that correct? [60]

A. Yes, sir.

Q. And at some time in 1946 did you have a

(Testimony of Warren C. Graham.)

conversation with her regarding transferring of this property to her? A. Yes, sir.

Q. When did that take place?

A. These conversations were around April of 1946.

Q. Did you at some time have a definite understanding with her that the property would be conveyed to her? A. Yes, sir.

Q. And when did that take place?

A. I had discussed the matter many times between the first of January 1946 until, well, around the month of April of 1946; and my wife and I decided that as we had no children, that we were traveling, and as she didn't like the house as she wasn't there when I bought it——

Q. (Interposing): Who are you referring to?

A. Mrs. Graham.

Q. Your wife?

A. That is right. That I had children by my first wife, my son and daughter.

The Court: I didn't hear that.

A. I had two children by my first wife, the daughter and a son. So we decided that we would give the property to my daughter. We discussed it with my daughter in the first part of April of 1946. [61]

Q. (By Mr. Wagener): Was there any discussion with your daughter on the terms by which this property would be conveyed to her?

A. At that time? No, sir.

Q. Was there ever any discussion as to the

(Testimony of Warren C. Graham.)

terms, either—well, withdraw that. Were there ever any discussions as to the terms of the transfer?

A. Yes. I talked to her on her birthday on May 16th, 1946, and told her at that time.

Q. Where was she then and where were you?

A. I was in Oakland, California, and she was in Georgia.

In words to this effect, I told her, wished her a Happy Birthday and told her, "O.K., the property is yours." Then she in turn said, "Well, I won't take it. But the only conditions by which I will take it, if you will cancel the note,"—which I had given her for some \$3300 some three or four years previously.

Mr. Watson: Your Honor, we move to strike this testimony as hearsay and self-serving. It has no bearing on the position of the United States so far as this section is concerned.

The Court: Well, counsel, you can't sit there and make no objection and then come in and make a motion to strike. If you have any objections to any of the questions, make them and I will try to rule on them. [62]

Mr. Wagener: I might point out that this whole matter had been gone into by the government on its interrogatories, which were submitted to Mr. Graham and which are in the file, or which I presume are in the file.

The Court: Proceed.

Q. (By Mr. Wagener): Was your daughter in fact indebted to you—Excuse me. Withdraw that.

(Testimony of Warren C. Graham.)

Were you in fact indebted to your daughter in May 1946? A. I was.

Q. And about what did that indebtedness amount to?

A. I had borrowed from her in New York about \$3300.

Q. About when was that, Mr. Graham?

A. In October of 1942.

Q. Was there any document evidencing that indebtedness?

A. Yes. She had asked me to give her a note for that indebtedness, which I did.

Q. Did it bear any interest?

A. It bore interest of five per cent. It was a one year note dated around October 16, 1942, for one year.

Q. Did you subsequently deed this property to your daughter or for her benefit? A. I did.

Q. And when was that done?

A. Well, subsequently we deeded to her, to Frank Hansen in trust for her, on August 6th, 1946. [63]

Q. I will show you a deed from Warren C. Graham and Agnes B. Graham, his wife, to Frank Hansen, a single man, describing the property described in the complaint in this action, bearing date 6 August 1946. I will ask you if that is the deed by which you conveyed this property to Frank Hansen in trust for your daughter. A. It is.

Mr. Wagener: I would like to offer this in evi-

(Testimony of Warren C. Graham.)

dence, your Honor. A copy of it has been attached, I believe, to that deposition which your Honor read this morning.

The Court: It may be marked Defendant's Exhibit C.

(Whereupon, deed referred to was received in evidence and marked Defendant's Exhibit C.)

Q. (By Mr. Wagener): Why, Mr. Graham, did you deed it to Frank Hansen in trust rather than directly to your daughter?

A. Frank Hansen was—my daughter was in Georgia at the time. Frank Hansen was my secretary for many, many years, and I told him I wanted to deed this property to him in trust to hold until my daughter came out here to live there.

Q. I will show you, Mr. Graham, a letter dated Oakland, California, August 1, 1946, to Mr. Frank Hansen. I will show you that first and ask you to identify it, if you will, please.

A. This is a letter addressed to Frank Hansen, dated August 1st, and accepted by him on August 1st, in which we turned [64] the home over to Frank Hansen to hold in trust until my daughter is ready to use it. It is signed by myself, Warren C. Graham, my wife, Agnes B. Graham, and Frank Hansen.

Q. Is that the original signature of yours, Warren C. Graham? A. That is correct.

Q. And is that the original signature of your

(Testimony of Warren C. Graham.)

wife, Agnes B. Graham? A. That is correct.

Q. Is that the original signature of Frank Hansen?
A. That is correct.

Q. And what date did Frank Hansen actually sign this?
A. August 1st.

Q. The date it bears? A. The date it bears.

The Court: August what?

A. August 1st.

Q. (By Mr. Wagener): 1946? A. Yes.

Mr. Wagener: I will ask that this be admitted into evidence as Defendant's Exhibit next in order.

The Court: Mark it Exhibit D.

(Whereupon, letter 8/1/46 referred to was received in evidence and marked Defendant's Exhibit D.)

Q. (By Mr. Wagener): Mr. Graham, what was your financial condition on August the 6th [65] 1946?

A. I had a net worth of in excess of [66] \$300,000.

* * *

Q. (By Mr. Wagener): I will show you Plaintiff's Exhibit 4 in evidence, which is a tax collection waiver purporting to bear date November 21, 1950, and extending the time to December 31st, 1952, within which to bring an action on the unpaid assessment for the year 1942. Where did you sign that, Mr. Graham?

A. At McNeill Penitentiary or the Federal Penitentiary at McNeill Island.

(Testimony of Warren C. Graham.)

Q. Do you know when you signed it?

A. My recollection is that I signed it about the 6th of February 1951.

Q. Several months later than the date it bears, is that correct? A. That is correct.

Q. Was it brought to you at McNeill Island?

A. Yes, it was brought to me by Mrs. Graham.

The Court: By whom?

A. By Mrs. Graham.

Q. (By Mr. Wagener): What was the reason that you signed it [67] at that time?

A. I signed it because——

Mr. Watson (Interposing): I want to make an objection. Well, go ahead.

The Witness: I had arrived at McNeill Island, sentenced previously, with the marshal and the sentencing papers or charge. I had no probation report and no investigating agency report.

Mrs. Graham asked me if she should sign this waiver and I told her—She told me that if we would sign this waiver, the Internal Revenue would send up the necessary papers we needed to have to get out for my parole—investigating agency report.

I therefore, under those conditions, I told her to sign her waiver and I signed mine.

Mr. Watson: Your Honor, we object to that testimony as hearsay. He is talking about what Mrs. Graham said to him. She is here in the courtroom and she can testify to that.

The Court: Counsel, as I indicated before, if you have any objection to make, make it before the

(Testimony of Warren C. Graham.)

answers come in. The question was, "Why did you sign it?" Now, that was the time to make the objection.

Q. (By Mr. Wagener): Mr. Graham, can you identify this document for me, which purports to be a photostatic copy of a document headed, "United States Penitentiary, McNeill [68] Island, Washington, February 6, 1951."

A. Yes, sir. It was my request to send this waiver to the Internal Revenue, and granted on February 8, 1951, by the case worker's signature.

Q. Does that refresh your recollection as to when you did actually send that waiver to the Department of Internal Revenue? A. Yes, sir.

Mr. Wagener: I am going to offer this in evidence, your Honor, as defendant's exhibit next in order.

The Court: It may be admitted and marked Exhibit F.

(Whereupon, request to send waiver was received in evidence and marked Defendant's Exhibit F.)

Q. (By Mr. Wagener): What was the Kincaid Manufacturing Company or Kincaid of which this purports to be a transferee's tax?

Mr. Watson: Your Honor, we object to that question on the ground that it is outside the issues of this case.

The Court: What is the purpose of it, counsel?

Mr. Wagener: I appreciate the fact that the

(Testimony of Warren C. Graham.)

amount of tax involved in an assessment can not be contested by the taxpayer after the statutory time has gone by. I know of no authority to the effect that the question of the entire validity, of whether it was in fact what it purports to be or not, can't be contested. [69]

In other words, it is our position that Mr. Graham at no time was ever the transferee of the Kincaid Company and that the tax was invalidly assessed in the first place. Not the amount of deficiency that the Kincaid Company may have had, but his liability as a transferee.

If counsel has authority to the effect that the validity of the tax itself, a transferee tax, can not be contested, I would be glad to hear it. I am familiar with the rule regarding the amount of the assessment not being contestable if not contested within the statutory time. It is our position Mr. Graham at no time was ever a transferee of the Kincaid Company.

The Court: Well, have you any authority to show that at this late date the validity of the assessment may be attacked?

Mr. Wagener: I have no authority either way, your Honor: either that it can or can't. I was unable to find any authority to the effect that the question could be as to the amounts involved in the tax. I appreciate that that can not be contested. They have to be paid if the time is allowed to go by and an action brought to recover them.

But this is not the ordinary income tax against

(Testimony of Warren C. Graham.)

Mr. Graham. It was an income tax against the company with which he was no longer connected, and it is assessed against him and Mrs. Graham as transferees of the company. It is our contention that they were not transferees and no valid [70] assessment was ever made against them.

The Court: They received notice of the assessment, did they not?

Mr. Wagener: Mr. Graham advises me he did not until much, much later, much past the time that the statutory period would have expired.

He had moved from New York to California at about that time, and it is his position he never received notice until after he was out here, long after.

The Court: What is the authority that the amount may not be contested? What is that? Do you have that, counsel?

Mr. Watson: No, your Honor, but I can supply it for you.

The way I understand it, the 90 day letter or notice goes out on that transferee's liability, they advise the taxpayer that a deficiency has been determined, and also at the same time that he is the transferee, and it instructs him that he has 90 days in which to file a petition in the Tax Court to contest the determination of the Revenue Service that he is the transferee, and that the transferee tax is in the amount as shown.

Now, if he does not file a petition——

The Court: That is what I want the authorities on. Is there a section in the Internal Revenue Code on it?

(Testimony of Warren C. Graham.)

Mr. Watson: There is a section, I am sure, which covers [71] it, but I don't have that on hand now. We didn't figure there would be any question made at this late date that the assessments were not valid.

The Court: I would like to have it right now. No use hearing the testimony if it isn't proper. Certainly I don't want to not hear it if it is proper. This is the time to have the authorities—right now. Do you want to refer to the Revenue Code?

Mr. Watson: Yes, your Honor. But aside from that, this matter hasn't been put in issue by the pleadings.

The Court: What?

Mr. Watson: The question of the transferee is not in issue, whether it is valid or non-valid.

Mr. Wagener: We have denied the whole cause of action on information and belief because we had no notice up to that time of the fact that there had been any transferee tax claimed.

I would be willing, if your Honor please, to postpone this part of the examination——

The Court: All right.

Mr. Wagener: ——until we have had a chance to submit authorities on it.

The Court: All right. Go on to something else.

Mr. Wagener: Then until we have gone into that, that is all of the witness at this particular time, your Honor. [72]

HAROLD W. GARDENER

called as a witness on behalf of defendant; sworn.

The Court: What is your full name, please?

A. Harold W. Gardener.

Direct Examination

By Mr. Wagener:

Q. And your present address?

A. 2 Walnut Drive, Pleasanton, California.

Q. I call your attention to the months of July and August 1950, and the period about that time. What was your occupation?

A. United States Probation Officer for the Northern District of California.

Q. In connection with your duties at that time, I will ask you if you were assigned to make a report in the case of United [73] States of America vs. Warren C. Graham and Frank Hansen on one Frank Hansen.

A. I was called upon to make a report on Frank Hansen.

Q. Did you make an investigation and subsequent report of Mr. Hansen? A. I did.

Q. In connection with that investigation, did you look into his character and make a determination as to his reputation for truth, integrity and honesty?

A. Yes, I did.

Q. What was your representation in that connection?

A. In reviewing the file a few moments ago, I find that I recommended against probation because

(Testimony of Harold W. Gardener.)

of his failure to recognize the seriousness of the offense, as well as his untruthfulness during the investigation.

Mr. Wagener: I have no further questions.

Mr. Watson: I have no questions, your Honor.

The Court: Was this an income tax violation?

A. Yes, it was, your Honor.

The Court: Does your office make recommendations in income tax violation cases?

A. In that case we did.

The Court: Have you ever done it in any other case? A. I can't recall.

The Court: I know of none since I have been here. [74] That is all.

Mr. Wagener: Thank you, Mr. Gardener.

(Witness excused.)

Mr. Watson: Your Honor, we have the authorities to support our position as previously given.

The Court: All right.

Mr. Watson: It is Section 311 of the Code of 1939, and that in turn refers to Section 272 of the Internal Revenue Code, the comparable provisions under the new code, are Sections 6901 and 6212.

The Court: What does the provision say, counsel?

Mr. Watson: "Transferred Assets: Method of Collection.

"The amounts of the following liabilities shall, except as hereinafter in this section

provided, be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred. A deficiency of tax imposed by this chapter''—

That is referring to income tax, your Honor.

The Court: Let's get to the point you are talking about. Did you have it there? Let's get to the point you are talking about. I don't want to read the whole section. Just the point involved.

Mr. Watson: As your Honor remembers, I said previously [75] what happened in the case of transferred liabilities is that a deficiency notice is sent out, they have the 90 notice of income tax. Notice was sent to Mr. and Mrs. Graham advising them of the transferee, determination of deficiency, and the fact that they were the transferees.

Now, this section and Section 272, if read in context and together, show that if they do not within the period of 90 days file a petition before the Tax Court to determine the question or take exception to the deficiency determination and the determination that they are transferees, then their rights are lost.

Mr. Wagener: Do you have the record of any such letter being sent in this case?

Mr. Watson: That record is in evidence now. It went in with our exhibits this morning.

Mr. Wagener: Could you show it to me?

The Court: Which one, counsel?

Mr. Watson: It is on the 899's in the first two causes of action.

Mr. Wagener: Those are the summaries that went in over our objection, your Honor.

Mr. Watson: Well, your Honor, the Code provides that taxes of this sort can not be assessed until after the 90 day letter has been issued, so for these to be valid assessments it is necessary that the letter have issued and no [76] petition having been filed.

Mr. Wagener: Can you show me, counsel, where it says here a letter, a 90 day letter was sent and what date it was sent?

Mr. Watson: I can't show you there. I am wrong on that. This doesn't show it, either.

The Court: Well, where is it shown, counsel?

Mr. Watson: Your Honor, it isn't shown.

The Court: I think it should be, don't you?

Mr. Watson: In ordinary experience it should, and for this reason: An assessment can not be made under the revenue code until the time the taxpayer has to contest the liability has run. You can not have a valid assessment until that has elapsed.

The Court: I am not going to assume a lot of things. You are coming into court endeavoring to prove something, so I would assume you would have the evidence to prove it. If there is some question about this thing, I think you should get the evidence if it is available.

Mr. Watson: These taxes or liability on these taxes arose in 1942 back in New York. That is the reason for not opening up these assessments after such a long period. The evidence may or may not be available.

The Court: Where is this law you said you were going to get at the recess and give to me? Give me the section. If [77] you can't read it to me, give it to me and I will read it. Where is it?

Mr. Watson: It is Section 311 of the Internal Revenue Code.

The Court: Section 311? What subdivision?

Mr. Watson: Well, the primary subdivision is "D."

The Court: D?

Mr. Watson: Yes, your Honor. If you will read subsection B, too, I think that will explain it.

The Court: Well, where is there anything in subdivision D which says what you say it says, counsel?

Mr. Watson: Well, that section merely deals with the time in which an assessment can be made. I am in error there.

The Court: That may deal with that, but we are talking about time within which an assessment can be contested. That is what we are talking about now, isn't it? I want to find the section that covers that.

Mr. Watson: Well, as I say, 311.

The Court: Here is 311. I have it in front of me. Point out the subdivision you are relying on and I will try to read it.

Mr. Watson: It says, "The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in Section 272(a), [78] be suspended

for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary.”

That says, in effect, the Commissioner in Section 272(a) is prohibited from making an assessment during the period that the taxpayer has a right to file a petition with the Tax Court.

The Court: That isn't what we are talking about. We are talking about trying to contest the assessment. It isn't when the statute of limitations runs against the government. We are trying to find out when the end of the time is for them to contest it. Is there some section that covers that?

Mr. Watson: Well, your Honor, I apparently don't have the section you want, but I can give you some cases that will deal with the problem.

The Court: All right.

Mr. Watson: This is a decision of November 5, 1954, and now reported in 1954, Prentice Hall, paragraph 72,317.

The Court: I do not have that available, Prentice Hall. I don't have it. Is there any reported decision?

Mr. Watson: Yes. *United States v. Hauser*, Southern District of California, 25 Fed. Sup. 689. And *Fiori v. Rothensies*, 99 Fed. 2d. 922.

With your Honor's permission, I would like to submit further authorities at a later time. [79]

WARREN C. GRAHAM

resumed the stand in his own behalf; previously sworn.

Cross-Examination

By Mr. Watson:

Q. Mr. Graham, I believe you testified that you transferred the property here in question to Frank Hansen in 1946, is that correct?

A. That is correct.

Q. At that time where were you living?

A. In Oakland.

Q. And were you living on this property that is involved in the lawsuit?

A. I was living at that time at 6035 Wood Drive, yes.

Q. In 1947 when you were in Northern California, where were you living? A. 1947?

Q. Yes. You were living at the same place?

A. That is right.

Q. Where in 1948 when you were in Northern California? A. Same. [80]

Q. And in 1949 where did you live when you were in Northern California?

A. I believe that almost all of 1949 I lived there.

Q. In 1950 where did you live when you were in Northern California?

A. Perhaps the first part of 1950 I lived there—until the beginning of 1950.

Q. And when, then, did you move out of the house?

A. I believe it was when this first federal case occurred.

(Testimony of Warren C. Graham.)

Q. Then you were living there until the time of your criminal tax prosecution? A. Yes.

Q. Have you lived there at any time since?

A. No.

Q. Now, Mr. Graham, with respect to Defendant's Exhibit C, I think you identified this document, is that correct?

A. That is correct.

Q. I will show you the back of this document and ask you if it is a deed and when the deed was recorded.

A. It says on here December 7. I have no personal knowledge of it.

Q. You have no personal knowledge?

A. That is right.

Q. Did you have the deed recorded?

A. No. [81]

Q. Can you tell me who did have the deed recorded?

A. It says on there Mr. Bernard B. Stimmel, attorney.

Q. Was Mr. Stimmel an agent of yours at that time? A. A what?

Q. Was he acting on your behalf?

A. He was our attorney.

Q. He was your attorney?

A. That is right.

The Court: Did you tell him to record it?

A. Specifically I wouldn't recall after nine years, your Honor, but I assume he handled the transaction and did the thing in a proper manner.

(Testimony of Warren C. Graham.)

Q. (By Mr. Watson): In any case it wasn't Frank Hansen? Frank Hansen didn't have anything to do with the recording, did he?

A. That I don't know, but I assume from the record, the document there say Mr. Stimmel and therefore I assume he is the one did the recording.

The Court: Do you have any independent knowledge about it?

A. No, sir.

The Court: Have you any recollection of telling anyone to record it?

A. No, sir. I relied entirely on Mr. Stimmel's position as attorney to do what was necessary. [82]

The Court: Did Mr. Stimmel prepare the deed?

A. I think he did, sir. I think he did, sir.

Q. (By Mr. Watson): Did he prepare it at your request? A. That is right.

Q. Did you talk to Frank Hansen about this transfer prior to the time the deed was recorded?

A. I did.

Q. When did you talk to him about that?

A. I talked to him at various times between May of 1946, and August 1st, 1946.

Q. And did you ever personally deliver a deed to him? A. No.

Q. Do you know that any deed was ever delivered to Frank Hansen? Do you know of your own personal knowledge?

A. Any other deed?

Q. Any deed to the property was ever delivered to him? A. Not to this property, no.

(Testimony of Warren C. Graham.)

Q. He never received a deed to the property?

A. That— I have no knowledge of that. It was delivered in connection with other transactions. He had perhaps delivered data and contracts and information to him. But this property, no.

Q. Is it true that you have at various times deeded other property to Mr. Hansen?

A. One other property I deeded to him, that's right. [83]

Q. And was that property the subject of a lawsuit? A. That's right.

Q. And at that time did the court determine that the transfer was invalid?

Mr. Wagener: I will object to that as not proper cross-examination; incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Watson): Mr. Graham, did you testify in connection with the criminal proceedings, income tax proceedings, with respect to this particular property? A. I did.

Q. In those same proceedings did you testify with respect to other property that you had and that had been transferred to Mr. Hansen?

A. I can't recall.

Q. Now, in your previous testimony with respect to the property, did you there testify that you borrowed the money from your daughter?

A. That is correct.

Q. And you so testified in this proceeding?

(Testimony of Warren C. Graham.)

A. In this proceeding?

Q. In the previous one, and did you so testify in this proceeding, is that correct?

A. That I don't recall.

Q. You don't recall whether you testified that you borrowed [84] money from your daughter?

A. That I don't recall.

Mr. Wagener: Referring to the previous proceeding or this one?

Mr. Watson: I first referred to the first proceeding, the criminal proceeding.

Q. (By Mr. Watson): Did you testify there you had borrowed money from your daughter?

A. I do no recall.

The Court: What?

A. I do not recall.

Q. (By Mr. Watson): You do not recall?

A. That's right.

Q. Do you recall that in the criminal proceeding you testified that property was a gift to your daughter?

A. Having seen that testimony within the last six months, yes, I said so.

The Court: Having what?

A. Having seen the testimony within the last six months, that I said.

Q. (By Mr. Watson): But you don't recall whether you testified that you borrowed money from her? A. That is right.

Q. You do not recall that?

A. That is right. [85]

(Testimony of Warren C. Graham.)

Q. Did you prepare this note that was supposedly given to your daughter? A. I did.

Q. And did you mail the note to your daughter?

A. Yes.

Q. You don't now have a copy of that note?

A. No, sir.

Q. Did you ever make any payments on the note?

A. No, sir, except in this particular transaction.

Q. What were the circumstances that gave rise to your request for the loan?

A. We were operating the Kincaid Company, Kincaid Manufacturing Company in New York City, with 800 employees manufacturing flame throwers and smoke screens for the United States government—which I invented. We had approximately nine million dollars in business of the Kincaid Company.

With expanding employees, had a difficult time getting the payroll every week, so I had borrowed other money from other sources and loaned some—I don't recall the exact amount—60, 80 thousand dollars, and also borrowed this 3,333.32 from my daughter.

Q. It is your testimony, then, that it was necessary for you at that time to borrow that sum of \$3,000—three thousand and some odd dollars, from your daughter in order to keep up your business operations, is that correct? [86]

A. That is correct. She had previously worked

(Testimony of Warren C. Graham.)

for the company and I remember the figure because it represented four times \$833.33.

Q. At that time was your daughter employed by you? A. Previously she was.

Q. Previously she had been?

A. Employed by the Kincaid Company.

Q. What was the nature of her employment?

A. She worked in the research and development department at a salary of \$10,000 a year.

Q. You were present on July 27th when your daughter gave her deposition, is that correct?

A. Yes, that is right.

Q. Do you recall that she testified that this money came from money she had earned working for a patent attorney who worked for you?

A. The patent attorney was head chief of the patent and research department of Kincaid Company.

Q. So actually she was paid by you rather than —by Kincaid Company rather than the patent attorney?

A. Kincaid Company. She worked in a separate office in the research with the chief of the research and development department; correct.

Q. Was this business, this Kincaid business, fairly profitable? [87]

A. Reasonably so. It was bothered with over-expansion pains of having too much business.

Q. Did you ever get the note back from your daughter? A. No.

Q. Do you know what happened to it?

(Testimony of Warren C. Graham.)

A. She told me she destroyed it. I told her to destroy it and she told me she did.

Q. When you called your daughter on—I think you testified you called your daughter sometime in May of 1946?

A. May 16th, yes, sir.

Q. May 16th? What did you tell us that the occasion was for the call?

A. That is her birthday.

Q. That is her birthday? A. Yes.

Q. It was your testimony you then told her you were transferring the property to her.

A. Yes, I testified in words to this effect: "I figured that, well, the property is yours. You can have it. Agnes said give it to you."

Q. Did you condition the transfer at that time on cancellation of the note?

A. I didn't. She did.

Q. That was her idea?

A. That is right. [88]

Q. You didn't want to hedge the gift with any such consideration, is that correct?

A. That is right.

Q. Now, after you had transferred this property, or after you had told her about making this gift, did you then tell her how you intended to handle the gift?

A. Eight or nine years ago I am positive I couldn't remember every word of a conversation.

Q. But you don't recall you told her you were going to put it in a trust for her at that time?

(Testimony of Warren C. Graham.)

A. I don't recall if I said that to her at that time, but that had been previously discussed with Mrs. Graham and myself.

Q. That had been discussed between Mrs. Graham and yourself? A. That is right.

The Court: Did you tell your daughter about that then over the telephone?

A. I don't recall, sir, if I told her those particular details, that I was going to transfer it in trust for her at the time because she was in Georgia and I was here. But we wrote, Mrs. Graham and myself, that we would hold it in trust for her until she was able to come out here and accept it.

Q. (By Mr. Watson): Did you tell her at any subsequent time that you had transferred it in trust? [89]

A. I certainly did, but exactly when I couldn't recall right now.

Q. Do you recollect—or let me put it this way: When did your daughter actually come to live in the property? A. 1948, I think.

Q. Approximately when in 1948?

A. (No response.)

Q. You don't remember, Mr. Graham?

A. It was after her husband had graduated from school.

Q. Was she out there at any previous time before she finally moved out in 1948?

A. She came out there for a week or two to introduce her husband to us.

Q. Do you recall testifying in the criminal pro-

(Testimony of Warren C. Graham.)

ceedings that she had lived out there for approximately eight or nine months previous to the date that she actually moved out for good?

A. Yes, she had. The house was bought when Mrs. Graham was absent. It was bought by my daughter and myself. My daughter liked the house very much. And then when Mrs. Graham came back she raised the devil with me for buying the house, said he didn't like it, it was too large, and that was the commencement of the idea to transfer the house to my daughter. My daughter was living there.

Q. It is your testimony it was your wife's idea to transfer [90] the property to your daughter, is that correct? A. That is correct.

Q. After you had deeded this property to Frank Hansen, did you file any gift tax returns?

A. No.

Q. You didn't pay any gift tax either, I don't suppose? A. That is right.

Q. To go back a minute, approximately how old was your daughter when she was working at the Kincaid Company and paying \$10,000 a year?

A. Now you are asking me a very embarrassing question. I would have to figure.

Q. Just approximately.

A. Oh, 16, 17 years old, something like that.

Q. When did you request Frank Hansen to deed the property to your daughter?

Mr. Wagener: If your Honor please, I object to that as assuming something not in evidence, that

(Testimony of Warren C. Graham.)

he requested Frank Hansen. I have other proof of that matter.

The Court: It may assume something not in evidence.

The Witness: The question?

Q. (By Mr. Watson): When did you request Frank Hansen——

The Court: That is the objection, that it assumes that he had requested Frank Hansen to execute the deed.

Mr. Watson: I misunderstood, your Honor. Did you rule [91] the question was objectionable?

The Court: I think it assumes something not yet in evidence.

Mr. Watson: All right. Let me phrase it this way:

Q. Did you at any time request Frank Hansen to transfer the property to your daughter?

A. Did I request Frank Hansen? No.

Q. And you never wrote to Frank Hansen and asked him to make a transfer to your daughter?

A. Not that I recall.

Q. You were present in New York when Mr. Hansen's deposition was taken, isn't that correct?

A. I was.

Q. Do you remember Mr. Hansen's testimony with respect to the transfer to your daughter?

A. I do.

Q. Do you recall that testimony?

A. That is right.

Q. Is it true that Frank Hansen said at that

(Testimony of Warren C. Graham.)

time that you sent the deed and asked him to sign it?

A. He was mistaken in that respect.

Q. I am just asking you for a yes or no answer. Is that what he testified to? A. Yes.

The Court: The record is the best evidence. I have [92] read it, counsel.

Q. (By Mr. Watson): Before this transfer to Frank Hansen of this deed to Frank Hansen, did you discuss the fact that this was to be held in trust with him—with Frank Hansen?

A. Certainly.

Q. And did he verbally agree to hold the property in trust?

A. Verbally and in writing.

Q. Were you present when Frank Hansen signed the letter that supposedly set up the trust?

A. I was present when Frank Hansen signed the letter that set up the trust, yes.

Q. And where did he sign that letter?

A. As I recall, it was at the shipyard at 501 First Street in Oakland.

Q. And what was the date?

A. August 1st, 1946.

Q. Was your wife present then?

A. I don't recall if my wife was present then or not.

Q. Then the letter was made out and signed by both of you and you gave it to Hansen and asked him to sign it, is that your testimony?

A. That is right.

(Testimony of Warren C. Graham.)

Q. Do you know whether Frank Hansen ever discussed this trust with your wife?

A. That I don't recall. [93]

Q. Now, previous to the time that this deed to Frank Hansen was recorded on December 7, 1946, had you been contacted by the Revenue Service with respect to your outstanding liabilities?

A. Previous to——

Q. December 7, 1946.

A. December 7th? Toward the later part of 1946, yes.

Q. Do you have any recollection of any definite dates?

A. Not any definite dates, no. Toward the later part of 1946.

Q. Latter part of 1946?

A. That is right.

Q. Had you been contacted with respect to your 1945 assessment, the Kincaid assessment?

A. You mean the 1942?

Q. Well, the 1942 taxes, 1945 assessments.

A. The first word I had of the 1942 transferee assessments was in July of——

Q. (Interposing): Mr. Graham, just a minute. That isn't responsive to my question. I asked had you been contacted by the Revenue Service at that time, or around that time, with respect to these 1945——

Mr. Wagener: What time are you speaking of?

Q. (By Mr. Watson): Around the time of the transfer to Mr. Hansen? [94]

A. Yes.

(Testimony of Warren C. Graham.)

Q. You had been? I am sorry; I may have been in error. Possibly I phrased that question wrongly and I apologize.

Where are you living at the present time?

A. 3255 Howe Street, Oakland 11.

Q. Are you paying the expenses of the attorneys for these proceedings? A. Partly, yes.

Mr. Wagener: I object to that as incompetent, irrelevant, immaterial; not proper cross-examination.

The Court: What is the purpose, counsel?

Mr. Watson: Well, we have in mind that the real party in interest is Mr. Graham and not the daughter, and that he has been paying for the——

The Court: As a matter of interest? Are you asking this as a matter of showing interest or bias? You may answer.

The Witness: I have not paid any.

Q. (By Mr. Watson): You have not paid any?

A. That is right.

Q. Have you made any arrangements to pay?

A. No.

Mr. Watson: That is all I have.

Examination by the Court

The Court: Mr. Graham——

A. Yes, sir. [95]

Q. During what period did Mr. Hansen work for you?

A. Mr. Hansen, your Honor, was my secretary

(Testimony of Warren C. Graham.)

for many, many years during a period of perhaps, off and on, over 15 years.

Q. I asked you during what period Mr. Hansen worked for you. Can you give me a definite answer to that?

A. Yes, sir. From 1932 to approximately 1939, then from 1945 until about 1948.

Q. Was Mr. Hansen working for you in 1946?

A. Yes, sir.

Q. During all of 1946?

A. I believe so, sir.

Q. Are you sure about that? Was there any time he wasn't working for you in 1946?

A. It is my recollection, sir, that he was working for me for all of 1946, that we had—there is a few months there that he left, and whether that occurred at the beginning of 1947 or last month or two of '46 I don't exactly recall at the moment.

Q. He states in his deposition he wasn't working for you in November and the first part of December, 1946. Is that true or not?

A. That could be possible, yes, sir.

Q. A moment ago I asked you if he worked for you, and you said all of 1946. Now, which is true?

A. Your Honor, it is my recollection that he worked for me [96] all of 1946.

If I may give a little explanation of that, that is this: Frank Hansen was very flighty and during all of the course of my employment with him he would walk out and come back. Whether one of

(Testimony of Warren C. Graham.)

those spells occurred at the end of 1946, at this moment I do not recall.

Q. Well, by "flightly" what do you mean? Irresponsible?

A. In that respect, yes, sir. That particular reason, I was in Washington and the man that had charge of the yard fired one of the telephone operators. Frank called me in Washington and said, "Adams has fired a telephone operator and if I am not going to have charge of the telephone operators I am leaving completely," and he walked out. Of course, when I got back I got hold of him and talked to him and he came back to work.

Q. Did this type of conduct happen a number of times? A. Yes, sir.

Q. Why did you decide to trust him with this property, then?

A. He had been a faithful and trustworthy employee of mine, in my employ for many years.

Q. What was the advantage of deeding the property to Hansen rather than to your daughter?

A. There was none. I am not an attorney. In that period I was working twelve, fourteen hours a day in the shipyard, perhaps more. [97]

Q. You say there was no advantage? Is that your answer?

A. Just my idea, is all, because I had discussed the matter of putting the property in trust for my daughter previously. That is the first thing came to my mind, so I said, "O.K., Frank, you

(Testimony of Warren C. Graham.)

keep this for my daughter until she comes out here."

Q. Why didn't you deed it directly to your daughter?

A. Because I consulted no lawyer and that was my idea of how it should be done.

Q. Who made the deed?

A. My wife and I signed it.

Q. Who drew it?

A. I consulted, when we had agreed to that, I told Mr. Stimmel to transfer the property to my daughter.

Q. I thought you said you didn't consult an attorney.

A. When the deed was made. Whether he made the deed or whether I made the deed, sir, I don't recall. But I asked him to handle it.

Q. You mean Mr. Stimmel handled this transaction? A. Yes.

Q. Drew the deed?

A. I couldn't truthfully say whether it was Stimmel drew the deed or whether I drew the deed or who drew the deed because I just don't recall.

Q. I show you Exhibit D which is the letter which contains [98] your signature and that of Mr. Hansen.

A. Yes, sir. That I wrote.

Q. You wrote that letter? A. Yes, sir.

Q. Did this transaction occur on the date that the letter bears, August 1?

(Testimony of Warren C. Graham.)

A. Yes. I don't recall exactly the date, but the date was the date shown on this letter.

Q. Well, did it happen when the letter was written? A. Yes.

Q. The date it was written? A. Yes.

Q. You see, that is the date it says, "Accepted August 1, 1946." Is that the date Mr. Hansen signed it?

A. Yes. We both signed it in the office.

Q. How did it occur the deed is dated six days later?

A. In the process of the rush of business we had, it apparently took that much to get the thing together.

Q. What do you mean, get it together. Time from what? From August 1st when Mr. Hansen signed that? A. Yes.

Q. Why did he sign this if he didn't receive the deed at the time?

A. I wanted him to hold this trust with my daughter. I made the agreement with him there to do so, and after that [99] was done, then we went to Stimmel and had this particular deed done. The letter was done in our office to go with this, Exhibit D, then it was completed in Mr. Stimmel's office.

Q. Who is Bob Haynie?

A. Bob Haynie is at the present time Haas & Haynie, the contractors.

Q. Was he then working for you?

(Testimony of Warren C. Graham.)

A. He was then working for me as an assistant. He is an attorney and was a notary at that time.

Q. He was a notary?

A. He was a notary and attorney, yes, sir.

Q. And an attorney?

A. Yes, he is, but not following the profession. His job with me was to organize various companies, and for that purpose he employed an attorney in San Francisco, Bergen Van Brunt, to come over to our office and form these various companies and keep the business straight legally. [100]

Q. Did he draw this deed?

A. No, sir. That much I remember. Bob Haney had nothing to do with the house.

Q. Was he working for you on a full time basis?

A. Yes.

Q. Bob Haney was?

A. Yes, sir. He was in the war, in the Navy, and an attorney in Oakland who was a friend of mine wrote me and asked me to hire him, and I hired him when he got out of the Navy. Not as an attorney, but just as an employee.

Q. When this deed was secured, August 6th you say, was Mr. Hansen there? A. No, sir.

Q. How did the deed get to Mr. Hansen?

A. Mr. Stimmel handled that matter from then. Mrs. Graham and I signed it in Mr. Stimmel's office.

Q. Did you give instructions as to what was to be done with the deed?

A. That I don't recall, sir, at this late date.

(Testimony of Warren C. Graham.)

Q. Well, do you recall whether you told him to record it or not to record it?

A. No, sir, I don't think any mention was ever made of that at all. Mr. Stimmel had been my attorney when I first came out here. He organized the repair company, the limited partnership, and I went to him with this. [101]

Q. To go back again to your daughter, you said that she was—Do you recall approximately the year she was born?

A. No, sir, I don't.

Q. I said approximately the year she was born?

A. She is 30. I believe she is about 33 or 34 years old now. That would make it about 1920.

Q. So that in 1946 she would be 26 years old.

A. Yes, sir.

Q. Now, to go back again as to what the reason was for not deeding it to her if you wanted to give it to her?

A. Not deeded direct, you mean?

Q. Yes.

A. I have only had, your Honor, one piece of real estate in my life, and that was in 1900 in New Orleans. They had these notary publics who are different from other notary publics in Louisiana at the time.

Merely based on my own assumption, I had assumed the buyer had to sign the acceptance on the deed, because I never had it before, and in the press of business of the shipyard—I was there in the day, I was there in the night, I was there mornings—and I told my daughter on her birthday, which was May, and as time dragged along I merely said to

(Testimony of Warren C. Graham.)

Hansen only to take this in trust for my daughter and when she was ready to come out here we would turn it over to her.

Q. When did you buy the property? [102]

A. October, 1945.

Q. How much did you pay for it?

A. Approximately \$33,000.

Q. Was it paid in cash? A. No, sir.

Q. How much of a loan was there on it?

A. \$20,000.

Q. Was there \$20,000 on it—when was that paid off?

A. Subsequent to the gift. Subsequent to my daughter's birthday.

Q. Before August, 1946, or after?

A. It was after, sir. I am not certain. Around that time, but how much I don't remember.

Q. Do you mean within a month or two of August, 1946, it was paid?

A. Two or three months, something like that.

Q. In any event, was it all paid by December, 1946?

A. Paid up in December, 1946, sir? I am almost certain, sir, that it was.

Q. In talking to your daughter about this did you tell her that the property was or was not clear; in other words, that there was a loan on it or was not a loan on it?

A. It was my intention that I would turn the property over to her free and clear, that I would pay the mortgage.

(Testimony of Warren C. Graham.)

Q. Who was the money borrowed from? [103]

A. The Central Bank.

Q. The Central Bank? A. Yes, sir.

Q. Did you say when that was paid off, Mr. Graham?

A. It was the latter part of 1946. The exact date I couldn't say.

The Court: All right.

Mr. Wagener: I have just one more question at this time, Mr. Graham:

Q. What is your relationship with Mr. Hansen now? Is he friendly to you or unfriendly?

A. He is very unfriendly, very bitter.

* * *

Examination by the Court
(Resumed)

Q. When did Mr. Hansen finally leave your employ, do you remember?

A. He left only three times after that other episode, and [104] he left my employ in 1948.

Q. What time in 1948, do you recall?

A. January of 1948. At that time he wasn't working as my secretary, but in the Graham Aviation Company. Working in the same office, however, in the company which I had owned.

Q. After he left your employ—you say it was in January of 1948, finally? A. Finally, yes.

Q. Where did he go then?

A. He went to Los Angeles and we worked together on some business transactions, but at that

(Testimony of Warren C. Graham.)

time he wasn't—I do not consider him being in my employ.

Q. Where was he, do you know, in May of 1948?

A. May of 1948?

Q. Yes. A. He was in New York, sir.

Q. Did you write to him there?

A. Yes, sir, wrote to him and talked to him, because he had gone and——

Q. Did you write to him in connection with this deed in May of 1948?

A. I don't think that I wrote him in connection with the deed. I may have talked to him on the phone in connection with the deed.

Q. How did the deed get back there for him to sign? [105]

A. This deed was—I prepared those two deeds and sent it to him.

Q. You prepared the deed? A. Yes.

Q. Yourself?

A. I am certain that I did, sir. Almost certain, sir. He had asked me to do so and I did.

Q. Who had asked you?

A. Frank Hansen.

Q. Had asked you to prepare it? A. Yes.

Q. Why did he want you to prepare it?

A. That I couldn't say. My daughter had written him requesting him in accordance with this trust to turn over the property to her. I could have done it all. I don't exactly recall too well.

Q. Well, after this deed from you to Hansen was

(Testimony of Warren C. Graham.)

recorded and came back from the County Recorder's office, what happened to it then?

A. As I recall the thing, it went to Mr. Stimmel's office. Whether he turned it over to Hansen who turned it over to me, or whether to me, I don't recall.

Q. You don't recall whether he gave it to you or who?

A. I say I don't know whether he turned it over to Hansen [106] or me. I do not recall.

Q. In the year 1947 who paid the taxes on this property?

A. The taxes for 1947 were paid by my daughter.

Q. How was that done?

A. She paid them by check with the Alameda County Recorder's office, or Clerk.

Q. How did she know the amount of the taxes?

A. Your Honor, the 1945 taxes, the 1946 and 1947 taxes were not paid. I didn't pay any taxes. They became by default, and my daughter paid the 1945, I am sure, and 1946, 1947, 1948 and 1949, up to this time, paying the present taxes together with the back taxes at the same time.

Q. She paid it all at the same time?

A. Yes.

Q. How did she know the amount of that?

A. They sent her a bill, I think.

Q. They sent her a bill? A. Yes.

Q. From the Tax Collector's office?

A. The first taxes were in 1945 or 1946. The

(Testimony of Warren C. Graham.)

originals, naturally I got—received the taxes. But those were not paid. She went down—I believe she went down—I believe she went down to the Tax Recorder's office and made an agreement with them in regard to the payment.

Q. When did she do that? [107]

A. That I couldn't say, sir.

Q. Well, when did she come out here to live?

A. She came out to live in 1948.

Q. I am talking about the 1947 taxes.

A. The 1947 taxes, your Honor, were not paid, if I remember correctly, until 1952.

Q. Until 1952? A. Yes, sir.

Q. Why was it that you allowed the taxes to go delinquent, we will say, in December of 1946 and April of 1947?

A. That would be another ignorance on my part. Not having owned any property, I didn't pay the taxes. I let them go. Because I had other things to do, I didn't pay them, and after they were accumulating, she went down and made a deal with the Tax Collector to pay them.

Q. Was it by reason of any financial stringency you allowed the taxes not to be paid?

A. I don't think that was the trouble at the time, sir.

The Court: All right.

Mr. Wagener: I have no objection to that transcript insofar as it relates to the property here in question or this transaction. [108]

THOMAS H. GRAHAM

called as a witness on behalf of the plaintiff; sworn.

The Court: State your name, please.

A. Thomas H. Graham.

Direct Examination

By Mr. Watson:

Q. Mr. Graham, where do you reside at the present time? A. In Tacoma, Washington.

Q. What is the nature of your present employment? [109]

A. I am employed by the Internal Revenue Service in Seattle.

Q. In the year 1950 where were you employed?

A. At Tacoma, Washington.

Q. What was the nature of your employment?

A. Internal Revenue Service.

Q. In or around November of 1950 were you so employed? A. I was.

Q. I will show you Government's Exhibit 4 and ask you if you are familiar with that document?

A. I am.

Q. Were you the person who secured Mr. Graham's signature on that document.

A. Well, I secured Mr. Graham's signature on some collection waivers—a collection waiver. I don't have any way of telling whether this is the particular one or not.

Q. I have a letter here that is addressed to the Hon. James G. Smythe, Collector of Internal Reve-

(Testimony of Thomas H. Graham.)

nue, Post Office Box 967, San Francisco, and it is signed by Thomas H. Graham.

Mr. Watson: I would like to have this marked for identification, please.

The Court: Exhibit 12 for identification.

(Letter referred to above was thereupon marked Plaintiff's Exhibit No. 12 for identification.)

Q. (By Mr. Watson): Mr. Graham, I will ask you if you will identify that letter. [110]

A. Well, that is a letter written by—dictated by me and signed by me, dated November 22nd, 1952.

The Court: What year?

A. 1950.

Q. (By Mr. Watson): And what is the date on the collection waiver?

A. November 21st, 1950.

Q. Now, with respect to the waiver you secured from Mr. Graham, can you tell us the circumstances surrounding that securing of his signature on the waiver?

A. Well, at that time I was division chief in Tacoma, and we received some waivers from the California District for signature.

The Court: I don't hear you. Speak up.

A. I said we received some waivers from the California District for signature. We were to take them over and get Mr. Graham's signature on them, and subsequently I did that.

Q. (By Mr. Watson): When you took these waivers over, what transpired at the prison?

(Testimony of Thomas H. Graham.)

A. Well, after getting over there, the usual procedure; I went into the office, and there is a waiting room there, and the guard brought Mr. Graham in and I gave him the waivers and he signed them.

Q. At that time were you familiar with the waivers? Had you examined the waivers? [111]

A. Oh, yes.

Q. After looking at this waiver that is marked Exhibit 4 for the Government, does that refresh your memory at all?

A. Well, I recall that they were income tax waivers, and had some, I would assume—well, of course I can't—I would assume that is the one.

Mr. Wagener: I will ask that go out as calling for a conclusion of the witness.

The Court: After you got the waiver signed, what did you do with it then?

A. I mailed them back to the district in California.

The Court: With a letter or without?

A. Yes, with a letter of transmittal. They had a letter of transmittal.

The Court: In which you sent the waiver back to San Francisco? A. Yes.

Q. (By Mr. Watson): Do you recall on the basis of your examination of this proposed Exhibit 12 approximately the date that you went to the Federal Penitentiary?

A. It seem to me that this was in the fall, but I couldn't swear as to the date. If that is the date of the letter, I would swear that is it.

(Testimony of Thomas H. Graham.)

The Court: How long after you went to the penitentiary did you write the letter sending the waiver down to San [112] Francisco, approximately?

A. I presume it may have been within a week's time, and may have been the next day.

Mr. Watson: We would like to offer this letter in evidence.

Mr. Wagener: I will object to it upon the basis that this witness has not definitely identified it as being connected with this particular waiver.

The Court: Well, let me see it. It may be admitted. Objection overruled.

(Whereupon, document previously marked Plaintiff's Exhibit No. 12 for identification was admitted into evidence.)

Mr. Watson: I have in my hand a copy of a letter of November 16, 1950, addressed to Hon. Clark Squire, Collector of Internal Revenue, Post Office Box 1619, Tacoma, Washington. It is an unsigned letter, but it bears the initials or the names of James G. Smyth on the bottom. I would like this marked for identification.

The Court: Government's Exhibit 13 for identification.

(Letter referred to above, 11/16/50, was marked Plaintiff's Exhibit No. 13 for identification.)

Q. (By Mr. Watson): Mr. Graham, I will show you this letter and ask you if you will look it over

(Testimony of Thomas H. Graham.)

for a minute. Now, on the basis of this letter——
Has this letter refreshed your [113] recollection?

Mr. Wagener: Just a moment. I object to that on the ground that there has been no testimony by this witness that he ever received this letter or ever saw it heretofore.

The Court: There hasn't been any yet, no.

Q. (By Mr. Watson): Mr. Graham, I will ask you if you recall receiving or seeing the original of that letter.

A. All I can say is that we did receive instructions to have these waivers signed and that—no, I can't say that I have seen the original of it, no.

Q. Is your letter of Nov. 22nd written in response to and does it refer to this letter or to the information contained in it?

Mr. Wagener: I object to that as being complex and compound. Are you asking whether it was written in response to it, Mr. Watson?

Mr. Watson: Let me phrase it this way:

Q. Showing you Government's Exhibit 12, I will ask you if your letter of November 22nd refers to a letter from the Collector in San Francisco dated November 16, 1950? A. Yes, it does.

Q. Will you tell the Court what date the letter, proposed Exhibit 13, bears?

A. November 16th.

Q. Is that letter from the Collector here in San Francisco? [114]

A. Yes, that letter was from the Collector James Smyth.

(Testimony of Thomas H. Graham.)

Q. And does that letter refer to collection waivers for 1942? A. It does.

Mr. Watson: Well, we will offer this in evidence.

Mr. Wagener: To which we object, your Honor, on the ground that it is a copy. There is no sufficient foundation laid. If there is an original, it must be in the hands of the Department of Internal Revenue and should be introduced. It is an inter-department letter.

Mr. Watson: Your Honor, we in our subpoena to Mr. Graham asked him to bring in the copies of any correspondence he had in connection with these waivers, and Mr. Graham informed me that he had searched his records and——

The Court: Well——

Mr. Watson: ——he can't find the originals, the reason being that when the Revenue Service was reorganized in the recent reorganization, these old papers were thrown aside.

The Court: Well, that may be, but this witness has not in any way identified that letter yet. It seems very difficult to refresh his recollection. The objection is sustained. [115]

* * *

Cross-Examination

By Mr. Wagener:

Q. Mr. Graham, don't you recall that the waiver that you obtained from Warren C. Graham related to a small tax in the amount of approximately \$175? A. No, I don't.

(Testimony of Thomas H. Graham.)

Q. Do you recall having a conversation with Warren C. Graham at that time, at the time you secured some waivers from him?

A. I remember talking to him, yes, sir.

Q. Do you recall his saying to you that he wondered why the Department would go that far for a \$175 tax waiver?

A. No, I don't recall that, sir.

Q. You don't recall any such conversation?

A. No, sir. [116]

* * *

CATHERINE YOUNG COBB

called as a witness on behalf of the defendants;
sworn.

Direct Examination

By Mr. Wagener:

Q. State your name, please.

A. Catherine Young Cobb.

Q. What is your residence, Mrs. Cobb?

A. Americus, Georgia.

Q. You are the daughter of Warren C. Graham,
are you, Mrs. Cobb? A. Yes, sir.

Q. And you are a defendant in this action?

A. Yes, sir. [121]

Q. You are the record holder of the title to the
property at 6035 Wood Drive in the city of
Oakland? A. Yes, sir.

Mr. Wagener: This is merely preliminary. I
don't mean to lead the witness.

(Testimony of Catherine Young Cobb.)

Q. You are the same Catherine Young Cobb named in the deed from Frank Hansen to Catherine Young Cobb, is that correct? A. Yes, sir.

Q. Mrs. Cobb, was your father, Warren C. Graham, at any time indebted to you?

A. Yes, sir.

Q. Was he so indebted to you in the year 1946?

A. Yes, sir.

Q. What was the nature of that indebtedness?

A. I don't remember the exact amount. It was around, I think, \$3,000, I believe, that I had loaned him after I had worked in New York for his company, and he had asked me—written me to lend him this money to use in the business, and I did so.

Q. Did you have any note? A. Yes, sir.

Q. Did that note provide for interest?

A. As I remember, it did.

Q. By the way, the question was asked of your father [122] yesterday and he wasn't sure. What was the date of your birth, Mrs. Cobb?

A. May 16th, 1922.

Q. 1922? A. Yes.

Q. Are you familiar with the property at 6035 Wood Drive? A. Yes.

Q. When did you first become familiar with that property? A. When my father bought it.

Q. Were you here at that time?

A. That is right. I was working in the shipyard, and we had gone, oh, for a period of a month or so, gone around. And I had always gone with him to look at different houses when he was interested

(Testimony of Catherine Young Cobb.)

in buying one. Mrs. Graham was absent during that time, mostly in L. A., or when he bought the house she was in New York.

Q. When was this?

A. He bought the house, I believe, around October of 1945.

Q. Were you actually with him when he did buy the house?

A. I was with. Well, I don't know that I was with him when he went to the real estate and signed the papers, or whatever you do to buy a house, but I was with him when we looked at the house on the three or four occasions we did when he decided to buy it.

Q. When did you return to Georgia? [123]

A. In April of 1946.

Q. Subsequent to that time did you ever have a conversation with your father relative to the house?

A. Yes.

Q. And approximately when was that?

A. Well, we had talked about it, of course, before I left here. And Mrs. Graham, when Mrs. Graham saw the house she said——

Mr. Watson: Your Honor, I object to this testimony about what Mrs. Graham said when she saw the house. That isn't responsive to the question asked.

The Court: That may go out.

Q. (By Mr. Wagener): When did you and your father actually discuss the house?

A. Well, he had discussed it before I left here

(Testimony of Catherine Young Cobb.)

and then, as I recall, I believe he called me on the phone and talked about it when he said he was going to get a deed.

Q. When did that conversation take place, if you recall, when he said he was going to get a deed?

A. As I recall it, I believe it was on my birthday in the same year, 1946.

Q. That would be May 16th, 1946?

A. That is right.

Q. What did he say to you at that time about giving you the house? [124]

A. Well, I believe he said that as we had talked about it before I left here, and that since Mrs. Graham didn't like the house and they had—in other words, most of what he said on the telephone was based on what we'd said before I left here.

Q. What was the result of that conversation?

A. I said that, as I recall, that I wouldn't take the house unless he—we would forget about this note that I had, and under those conditions then I would take it.

Q. What did you then do about the note?

A. Well, at a later date I tore it up.

Q. Did you at some time after that get a deed to the house yourself?

A. That's right.

Q. Do you remember about when that was?

A. It must have been some time in May of 1948.

Q. You had that deed from—who did that deed come from?

A. Well, that was the deed from Frank Hansen to me.

(Testimony of Catherine Young Cobb.)

Q. Mrs. Cobb, I show you what purports to be a signed carbon copy of a letter dated at Athens, Georgia, April 2nd, 1948, addressed to Mr. Frank Hansen, 1155 California Street, San Francisco. Can you identify that letter?

A. Well, as I said in the deposition, I don't actually remember on April 2nd, 1948, sitting down at the typewriter and writing this particular letter, but I would certainly [125] swear I did write this letter, and it is certainly my signature and it is the way I write a letter and certainly looks like it was written on my typewriter. I would certainly say I did write that.

Q. That purports to be a copy of a letter written to Frank Hansen in which you request he convey the property to you in accordance with his agreement with your father?

A. That is right.

Mr. Wagener: I would like to offer this in evidence as Defendant's Exhibit next in order.

The Court: Exhibit G.

(Whereupon letter of 4/2/48 referred to above was admitted into evidence as Defendant's Exhibit G.)

Q. (By Mr. Wagener): I next show you, Mrs. Cobb, two deeds bearing date May 20, 1948, from Frank Hansen, a single man, to Catherine Young Cobb, a married woman, marked as recorded in the office of the County Recorder of Alameda County on May 28, 1948. I will ask you if you will identify those two deeds.

(Testimony of Catherine Young Cobb.)

A. Yes, these are the deeds from Frank Hansen to me which I received in 1948.

Q. Both of these deeds refer to different portions of the property at 6035 Wood Drive, is that correct?

A. Well, I believe one of them is to property around the corner. [126]

Q. But it was all part of the same big parcel, is that correct?

A. No, two different parcels.

Q. I see. But one of them is the property at 6035, and that is this larger document?

A. Yes, and a small vacant lot.

Q. A small vacant lot around the corner?

A. That is right.

Mr. Wagener: I will offer these in evidence, your Honor, as defendant's exhibit next in order. They have been offered together.

The Court: Defendant's Exhibit H-1 and H-2.

(Deeds referred to above were thereupon admitted into evidence as Defendant's Exhibits H-1 and H-2.)

Q. (By Mr. Wagener): Where did you receive these deeds, Mrs. Cobb, do you remember?

A. In Georgia.

Q. In Georgia? And what did you do with them then?

A. I sent them to my father.

Q. You sent them to your father?

A. That is right.

Q. For recording, is that right?

(Testimony of Catherine Young Cobb.)

A. That is right.

Q. Now, you were asked at the time of the deposition and [127] agreed to bring today any evidence you had of payment of taxes on the property, Mrs. Cobb. Do you have such evidence with you?

A. Yes. I do not have the cancelled check because, as I said at the time of the deposition, all of my personal papers had just been shipped back to Georgia the week before my deposition was taken, and if I went back to Georgia before the trial I would be glad to get the cancelled check. I did not do that. But I do have here the receipts for the taxes on the property for 1946 and—should I explain what happened about the taxes?

Q. Yes, if you will, please.

A. First of all, February of 1952, I received this letter from the Tax Collector's office in Alameda County telling me that the property would be deeded to the State of California for delinquent taxes for the years 1946 and 1947 unless they were remitted in full, and if I wanted to start an installment plan on the taxes to come to see them, and it had to be done before July 1st, 1952. So I went.

Q. Just a moment.

Mr. Wagener: May we mark this for identification, counsel? I will ask that this letter from Edwin Meese, Jr., Tax Collector, dated February 8, 1952, and addressed to Catherine Y. Cobb, 6035 Wood Drive, Oakland, California, be marked for identification. [128]

(Testimony of Catherine Young Cobb.)

The Court: Exhibit I for Identification.

(Letter of 2/8/52, Meese to Cobb, referred to above, was marked Defendant's Exhibit I for identification.)

The Witness: So I went down and found out that by paying the taxes for 1952 first, then they would set up a plan whereby I could pay the taxes for 1946, 1947, 1948, 1949, 1950, on a five-year installment plan.

So it shows here that on June 30, 1952, I went down and paid them the amount of \$925.63, and that was the taxes, or on the taxes for the years 1946 and '47.

As I said, I do not have the cancelled check with me because that had been shipped—all my furniture and everything had been shipped to Georgia. But looking through my check book, I find this check was written by me, and it was my check No. 109 as of that date, June 30th, on my account at the American Trust Company in Berkeley.

Q. You wrote this all on check No. 109?

A. I did.

Q. When did you discover that?

A. I don't know whether day before yesterday or yesterday when I was looking through my checks.

Q. Your check stubs? A. Stubs.

Mr. Wagener: I would like to offer that in evidence as [129] being a receipt given for the taxes

(Testimony of Catherine Young Cobb.)

for the year 1946-1947, the receipt being to Catherine Young Cobb.

The Court: Exhibit J.

(Check stub referred to above was admitted in evidence as Defendant's Exhibit J.)

The Witness: I also have here the receipt that was for the taxes for this delinquent tax business for 1946 and 1947, and I notice when I paid the payments on March 31st, 1953, one paper says the taxes were 1946-1947 and one they were 1945-1946.

Then I have it also for 1954 and 1955. And I have written down the check number that I made the payments on, like on 1953 it was my check No. 172 and 1954 my check number 228, written on the dates for that time on the receipt. And I believe on each occasion I personally went down myself and paid them and got the receipts.

Q. (By Mr. Wagener): Do these cover the same taxes, Mrs. Cobb, as that other receipt?

A. It is the next year's installment.

Q. The next year's installment?

A. Yes. In other words, there is one more installment to be paid next year, which will be the last installment to be paid on this delinquent taxes for 1946 and 1947. And then each year before you make those delinquent payments, you have to pay the present year's tax, and 1953, 1954, 1955, the [130] present years' taxes, were paid, you know, at the right date.

Q. These were all paid by you?

(Testimony of Catherine Young Cobb.)

A. That is right.

Mr. Wagener: I would like to offer these two receipts in evidence as the defendant's exhibit next in order.

The Court: Exhibit K.

(Thereupon, two receipts referred to above were admitted into evidence as Defendant's Exhibit K.)

Mr. Wagener: I think that is all I have at this time.

Cross-Examination

By Mr. Watson:

Q. Mrs. Cobb, it is your testimony that you are at the present time residing in Georgia, is that correct? A. That is correct.

Q. In the year 1946 where did you reside?

A. I came out here in April of 1945 and stayed until April of 1946.

Q. You were here continuously during that period?

A. That is correct. I believe I went to Georgia during Christmas of that year for a period of two weeks. I believe that is the only time I left California.

Q. But from April of 1946 until December of 1946 you were living in Georgia, is that correct?

A. I went back to Georgia because my husband was rather——

The Court: Just answer the question. [131]

(Testimony of Catherine Young Cobb.)

A. Yes, sir.

Q. (By Mr. Watson): In the year 1947 where did you reside? A. In Georgia.

Q. In the year 1948 until May of that year, where did you reside? A. 1948?

Q. Until May of 1948? A. In Georgia.

Q. In Georgia? Then it is your testimony that during the balance of 1946, 1947 and the first part of 1948 you resided continuously in Georgia?

A. Yes, sir.

Q. I think that in your deposition you gave on the 27th of July you testified that you were in California for a short period.

A. About five to ten days.

Q. About five to ten days?

A. Yes, in August of 1946.

Q. During that period of time did you see Mr. Hansen?

A. I don't recall whether I did or not.

Q. I believe in your earlier testimony at your deposition you testified that you did know Mr. Hansen. A. That is correct.

Q. In what connection did you know Mr. Hansen?

A. Well, I knew Mr. Hansen in New York before my father [132] moved out here, and I certainly knew him when I was out here because he was working in the same shipyard that I was working in.

Q. You were regularly employed in the shipyard? A. Yes, I was the year I was here.

(Testimony of Catherine Young Cobb.)

Q. You were drawing a salary?

A. That is right.

Q. Do you recall what your salary was?

A. I believe it was around \$400 a month.

Q. Do you recall approximately how old Mr. Hansen was at that time?

A. I have no idea.

Q. But you say you know him reasonably well, is that right?

A. That is correct.

Q. With respect to these payments on property, now in 1946 did you receive any bill for the real estate taxes?

A. Did I?

Q. In 1946?

A. No.

Q. And you didn't pay any taxes in 1946?

A. No.

Q. In 1947 did you receive any bill for the real estate taxes on the property?

A. I don't remember when the first—I just don't remember when the first time was that I did receive—when the taxes [133] started coming to me.

Q. Do you have any documents that would show when you were billed for the taxes in 1947?

A. I just have the receipts and the cancelled checks.

Q. But you don't have any billings?

A. No.

The Court: That receipt and cancelled check is in 1952, isn't it?

A. That is right, sir.

The Court: Prior to that time you had paid no taxes on the property?

(Testimony of Catherine Young Cobb.)

A. That is right.

Mr. Watson: Could I see those receipts, your Honor?

Q. Mrs. Cobb, I will show you the document that has been marked as Defendant's Exhibit J. It has to do with the real estate taxes for 1946 and 1947. I will ask you if you will read the top line about who the taxes are assessed to.

A. "W. C. and Agnes B. Graham."

Q. With respect to the taxes shown on Defendant's Exhibit K, who do they show the taxes were assessed against?

A. The same.

Q. Now, do you have any documents that show who the taxes were assessed against for the year 1948?

A. 1948? I don't know whether I do or not.

Q. Do you have any independent recollection of any document [134] that indicated who the taxes were assessed against for the year 1948?

A. I would have to see the documents before I could remember. I remember—I don't remember what year it was—I remember my going down to the Alameda County and telling them that they should be assessed to me, but I don't remember when that was.

Mr. Watson: Could I see the deed, the two original documents, which were defendant's exhibits?

Q. (By Mr. Watson): Mrs. Cobb, I will show you these two deeds and ask you, do you know that those show that they were recorded at the request of the grantee?

A. Do they say that?

(Testimony of Catherine Young Cobb.)

Q. Yes.

A. It says, "Recorded at the request of grantee."

Q. Did you personally take these documents in and have them recorded?

A. I believe I testified I was in Georgia at the time and sent them to my father to have them recorded.

Q. Then he had them recorded for you at that time, is that correct?

A. I presume that he did.

Q. Do you recall that in your deposition you testified that you had never had—you had never owned any real estate until the Oakland property was transferred by deed to you in 1948? [135]

A. That is correct.

Q. And do you also recall that you testified that as a result you were not familiar with real estate transactions?

A. That is correct.

Q. Do you also recall that your testimony was to the effect that you knew nothing about deeds?

A. That is correct.

Q. Do you recall that in your deposition testimony you stated then you were certain the letter of April 2nd, which was just received in evidence, was written by you?

A. That is correct.

Q. And you so testified, today is that correct?

A. That is correct.

Q. You also at the time of taking the deposition and at the present time said that you drew that conclusion as a result of looking at the form of the

(Testimony of Catherine Young Cobb.)

letter and the makeup and the heading and the closing salutation, is that correct?

A. That is right.

Q. I hand you this letter and ask you if you will again read the letter.

A. "In accordance with the terms and conditions——"

The Court: Just read it to yourself.

A. Oh.

Q. (By Mr. Watson): On the basis of the actual content of that letter, and considering your unfamiliarity with [136] transactions involving transfers of real estate, is it still your testimony that you wrote that letter—you yourself wrote that letter?

A. That is right. I say that I don't know anything about deeds. I don't know a whole lot about deeds, but I have certainly—first of all, I went to business school for three different——

Q. Never mind. I just asked a simple question.

The Court: You may finish the answer.

A. I was just going to say I had certainly had experience in writing business letters in the past, and in fact, I used to teach shorthand and typewriting and writing business letters, I certainly have heard what a deed was, certainly knew deeds had be be recorded.

When I say I wasn't familiar with things about deeds, I certainly—I mean, I don't know a whole lot because I had never had dealings with a deed before. But I certainly think it doesn't take much to write a letter of that particular type that I wrote

(Testimony of Catherine Young Cobb.)

there, especially when one has had experience in writing letters and being a secretary.

Q. (By Mr. Watson): Now, in connection with this transfer and your conversation with your father on your birthday, did you consider at that time that this property was a gift to you?

A. Well, I would say I considered it partly a gift, and then [137] I paid for part of it.

Q. Isn't it true that in your deposition you stated, in substance, that you knew the value of the property was greatly in excess of the amount of your note and that consequently you actually considered it a gift?

A. I believe I said that I don't know that I knew how much the house actually cost at that time. I don't know when I found that out. I certainly know it now.

I said that I knew the house cost more than \$3,000, yes, and that \$3,000, if I was going to cancel the note which I—for money which I had given my father, I certainly think I had paid for part of the house. I think I said I considered it partly a purchase and partly a gift.

Q. Now, with respect to this note, approximately what was the date that that note was received by you?

A. As I said at the time of the deposition, I don't remember.

The Court: Never mind what you said then. That doesn't matter. Just answer the question now, please.

(Testimony of Catherine Young Cobb.)

A. All right, sir, I don't remember.

Q. (By Mr. Watson): You don't have any recollection, Mrs. Cobb? Now, do you have any recollection about the conversation that resulted in your loaning the money to your father?

A. Conversation with him?

Q. Yes.

A. Well, I believe I don't remember whether he wrote me or [138] whether he talked to me on the phone about it.

Q. Did you prepare the note?

A. No, I believe he did and sent it to me.

Q. And did you ever collect any interest on that note? A. No.

Q. Did you ever take any steps to collect the note?

A. I believe on several occasions I asked him when he was going to pay me the money he owed me.

Q. And you have testified that you don't now have any copies of that note? A. No.

Q. Can you recall what sort of note it was?

A. What do you mean by that?

Q. Well, how was it to be paid?

A. I don't remember.

Q. Did you ever talk to your father about why the property was placed in trust?

A. Not that I recall.

Q. Did you ever talk to Mr. Hansen about the trust? A. I don't remember.

Q. In 1948 had you had any conversations with

(Testimony of Catherine Young Cobb.)

Mr. Hansen? A. About the——

Q. Just any conversations at all?

A. Well, I saw him every day in the shipyard.

Q. In 1948? [139]

A. Oh, 1948. Not that I know of.

Q. Did you then know where he lived, as a matter of fact?

A. Well, I must have if I sent the letter to him out here.

Q. Answer the question, did you know then?

A. I don't remember what I knew then. I mean, I must have if I wrote him a letter out here.

Q. Did you make any inquiries before you wrote that letter as to where Mr. Hansen was then?

A. I don't remember.

Q. Had you ever visited him in his residence?

A. I believe I was there on one occasion.

Q. When was that?

A. I believe I went there with my stepmother and my father one evening.

Q. In what year?

A. That would be, I imagine, 1946.

Q. Then over a period of two years you were still able to remember where Mr. Hansen lived?

A. I believe he and Mr. Haynie both lived in the same apartment house. That was in a very prominent place on California Street on Nob Hill. It wasn't a hard place to remember where he lived.

Q. But you remembered the definite address at that time?

A. I am quite sure I must have put it down in

(Testimony of Catherine Young Cobb.)

my papers some place, his address, knowing that at some time I was going [140] to write him and ask him for the deeds.

Q. When your deposition was taken you were asked that, assuming that this Court did say that the property should be yours, legally in your name and free and clear of federal tax liens, would you feel any obligation to retransfer it to your father?

A. No, I would not.

Q. You would not? A. No.

Q. You don't feel any moral obligation to your father? A. No.

Q. What is the present financial condition of your father?

A. So far as I know, he has absolutely nothing.

Q. And for how long has he been in such a financial condition?

A. I would say since, well, certainly since 1950. I would say long before that, however. I would say—it was around 1948, I would say, that since then I believe he has, to my knowledge, only at one time made any money and that was on an export deal, shipping some asphalt to a foreign country. And to my knowledge, that is the only time in all those years that he has made one single penny, all that he has ever had, a single penny.

Q. But, in spite of those facts, this knowledge of his financial condition, you still wouldn't feel any moral obligation to sell the property and pay him part of it or give part of it [141] to him?

(Testimony of Catherine Young Cobb.)

A. I don't think so, no. I have helped him in the past since he hasn't had any money and hasn't been able to get anything started. I have certainly given him money. But so far as the actual house, I don't know what I would do, but I certainly wouldn't feel any moral obligation to give him part of it.

Q. Now, in your previous testimony in this deposition did you testify that the money that you loaned to your father came from earnings when you were employed by a patent attorney?

A. I believe I said I was working with this patent attorney who worked for my father. In other words, we were both working for my father's company.

Q. At the deposition didn't you testify that the money you used was money paid to you by the patent attorney?

A. I don't believe I did say that. If I did say that, I believe it was misinterpreted because that isn't what I meant. I worked for this patent attorney who worked for my father. We both worked for my father.

Q. Mrs. Cobb, at your deposition previously you were asked if you were paying the attorney's fees in this proceedings, and I believe at that time you testified that you didn't have any recollection whether you were or were not; is that correct?

A. I believe—— [142]

The Court: The record is the best evidence of what she said in the deposition.

(Testimony of Catherine Young Cobb.)

Mr. Watson: Well, your Honor, I didn't know we were going to have the deposition here.

The Court: The deposition of the party is always admissible and this is a party to the action. The record is the best evidence of what was said at that time.

Q. (By Mr. Watson): Mrs. Cobb, in connection with that examination, did we request you to bring in any cancelled checks you might have showing that you had paid the attorney's fees?

A. That is correct.

Q. Do you have those?

A. No. I said at the time if I stayed here I would not be able to get the cancelled checks because they were in Georgia, but if I went back to Georgia I could certainly send them back to you and would be glad to do so.

Mr. Wagener: Counsel, if you desire we can stipulate that the payments which she made were not payments of counsel fees. She made payments of—pursuant to a stipulation we had that the net amount of the rental of the house would be impounded, she made payments to me of the net amount of the rentals, put it in an account in the Bank of America in Oakland under my name and the name of the former Collector of Internal Revenue, under a trust holding agreement. Those are [143] the checks she sent to me.

The Court: Speaking of that deposition, counsel on both sides, is it offered in evidence?

Mr. Watson: It hasn't been yet.

(Testimony of Catherine Young Cobb.)

The Court: Will it be?

Mr. Wagener: I am perfectly willing it be offered in evidence.

The Court: Let's give it a number then.

Mr. Wagener: All we have, as I said before, is a copy of it. I don't know where the original is.

The Court: Mark it Government's Exhibit 14.

Mr. Watson: Your Honor, the deposition was taken at their request. I don't know whether it makes any difference.

The Court: It doesn't make any difference.

(Deposition of the witness entered into evidence as United States Exhibit No. 14.)

Mr. Watson: I have no further questions.

Mr. Wagener: That is all, Mrs. Cobb.

The Court: Just a moment.

Examination by the Court

The Court: In 1948, April 2nd of 1948, the date of this letter written to Mr. Hansen, prior to writing that letter had you ever talked to Mr. Hansen about this trust?

A. I don't recall. I really don't.

Q. When was the last time you had seen Mr. Hansen prior to [144] April 2nd, 1948?

A. I imagine it would have been when my husband and I came out here in the latter part of August of 1946. We were here for about ten days. It was either the latter part of August or first part of Sep-

(Testimony of Catherine Young Cobb.)

tember. It was between the summer and fall sessions in the University of Georgia.

I am quite sure I must have seen him then. I don't really remember, but I must have seen him then. That would be the last time I could have seen him.

Q. Then from 1946 when you were here for five or ten days——

A. That was in August. And of course I was here from January through April—April, 1945, to April, 1946, I was here. Then I came back in August for about ten days.

Q. When you were here in August for ten days, did you see Mr. Hansen and did you ever have any conversation about this trust?

A. I just don't remember. That would be the last time I could have seen him.

Q. Did you ever have any conversation with Mr. Hansen about this trust?

A. I don't remember. I don't think that I did.

Q. When did you learn that he was holding it in trust?

A. I don't remember whether my father told me on the phone that he was going to put it in trust until I would come out here to stay, or whether it was when we came out in August, [145] or the first of September, and we discussed it then. Could have been on the phone that he was going to do it, or could have been in August that he did do it.

Q. Well, you have no recollection about that at all?

(Testimony of Catherine Young Cobb.)

A. I just remember discussing it. I am quite sure we discussed it when I came out here in August of that year, that I discussed it with my father.

Q. What did you discuss? What was said?

A. I mean, my father just said he had gone ahead and given me the house and put it in trust with Frank Hansen until I decided to come out here to stay.

Q. Did you ask him why he did that?

A. I don't remember. I don't think—didn't make any difference to me one way or the other.

Q. Well, you were here, you said, the first ten days of August, 1946?

A. No, it was either the last week in August or first of September. It wasn't the first part of August. It was after summer school was out. My husband had been going to summer school and school started about the 15th of September. I might not have even been here the last day of August. Some time between the last of August and beginning of college in the fall.

Q. Did you get any documents at that time in connection with the house?

A. No, sir.

Q. Did you ever see any letter discussing the trust situation of this house which had been signed by Mr. Hansen?

A. Did I ever see a letter signed by Mr. Hansen about the trust of the house? I have seen it now. I

(Testimony of Catherine Young Cobb.)

have seen it recently, but whether I saw it then I don't recall.

Q. You have no recollection of seeing it?

A. I just don't remember. I could have. I just don't remember.

Q. Why did you write the letter in April of 1948, to Mr. Hansen?

A. Because my husband was getting ready to graduate and he decided he wanted to go to California to live, so we were coming out here, so I wrote him the letter.

Q. And addressed it where?

A. I addressed it where? I must have addressed to this address here in California.

Q. Where did you get that address?

A. Well, he always lived there when he was in California, I knew that. I must have had the address in my address book or my notes somewhere.

Q. Did you have it in your address book or notes somewhere?

A. I don't know. I must have. I had to get it from somewhere. This is a long time ago, so I don't want to say I did or didn't do something unless I really remember it. The [147] whole time I knew him out here he always lived there.

Q. When did you learn that he was in New York at that time?

A. I don't remember. It is all so long ago I just hate to say.

Q. Was he in New York in 1948 in the spring?

(Testimony of Catherine Young Cobb.)

A. I don't know. I must have thought he was in California if I sent the letter to him there.

Q. Did you ever learn that he was in New York at that time?

A. I don't remember. To my own knowledge, I just don't know.

Q. Well, did you ever see the deed that he signed?

A. To me?

Q. Yes.

A. Yes.

Q. At that time?

A. That is right. In Georgia.

Q. When did you first see that deed, those deeds?

A. When they were sent to me in Georgia in 1948 after I wrote the letter.

Q. He sent to you in Georgia?

A. That is right.

Q. Did he write a letter when he sent them to you?

A. I don't think so.

Q. You mean they just came in an envelope without any [148] accompaniment?

A. As I recall.

Q. Did you expect that would be what would happen?

A. Well, didn't make any difference to me one way or the other. I don't remember what I thought at that time.

Q. Did you look at the deeds when you got them?

A. That is right.

Q. Did you notice they were notarized in New York?

(Testimony of Catherine Young Cobb.)

A. I don't even know that now. I don't know that it is now.

Q. What did you do with the deeds?

A. I sent to my father.

Q. Did you write a letter at that time?

A. To my father?

Q. Yes. A. I must. I must have.

Q. Do you have a copy of that letter?

A. No, sir. I don't think—I don't ever write carbons when I write a letter to my father or friends or something like that. I never keep a carbon.

Q. You contend this was a carbon of a letter written Mr. Hansen?

A. Any business letter, I always keep a carbon of those.

Q. What was the advantage to you of having this property in trust with Mr. Hansen? [149]

A. I don't know. My father just said that was what he had done and that is what he was going to do. Didn't make any difference to me one way or the other. He said he wanted to do it that way until I came out here to live.

Q. Well, you, then, did not get the letter which had been signed by Mr. Hansen in which he accepted the trust, did you?

A. I don't believe so. I don't remember seeing it.

Q. How did you know the date of the trust? When did you learn that?

A. I don't quite understand what you mean.

Q. Your letter of April 2nd, 1948, refers to the

(Testimony of Catherine Young Cobb.)

trust dated August 1st, 1946. How did you learn the date of that trust?

A. I imagine my father must have told me that.

Q. And you remembered it for two years without any written record of it, did you, Mrs. Cobb?

A. I don't know. I don't know whether I wrote the things down and kept them to when I was going to write the letter. I don't know because it is so long ago I don't remember.

Q. You said you didn't get that letter that Mr. Hansen signed accepting the trust, and yet in that letter you speak of the trust dated August 1st, 1946.

A. That is right.

Q. How did you know that?

A. I must have made some record of it.

Q. Well, where? [150]

A. Well, I have all kinds of places where I keep records of different dates and things, a little book with things like that and different things.

Q. What kind of book did you put that record in, please?

A. I don't know. I say I must have had it because I must have known. My father must have told me. Maybe I saw the letter when I was out here the last part of August or first of September.

Q. I asked you a moment ago about that and you said you did not see it.

A. That is it. I don't think I did, but I might have. I don't want to say I knew it that way because I just really, honestly and truly can't remember. I am just trying to say what I really do re-

(Testimony of Catherine Young Cobb.)

member but when I don't remember, that is all I can say.

Q. You were asked a little while ago the approximate date of the note your father signed. Do you know that? A. No, I don't remember.

Q. When did your father come to California from New York?

A. I just don't know. It must have been in—I don't know whether it was 1944 or whether it was 1945. I don't remember.

Q. Where were you when this note was given to you? A. In Georgia.

Q. You were not working for your father then?

A. Not then. I had been, but I wasn't then. [151]

Q. When did you work for your father?

A. I believe I worked for him——

Q. In New York, I mean.

A. Yes. As I recall, I visited my father in New York in the summer of 1938, 1939, and one summer I didn't go up there, whether 1940 or 1941 I don't remember. Then I was up there in the summer of 1942 until December of 1942. Then I was up there——

Q. (Interposing): Were you working for him at that time? A. That is right.

Q. I am trying to find out not when you visited there but when you worked for your father.

A. I worked for him, I think, all except the first two summers that I was up there.

Q. Well, when would be the last time you worked for him?

(Testimony of Catherine Young Cobb.)

A. I was trying to think if I was up there in 1943. No, I believe the last time I worked was in December—January of—that would be January of 1943. Either December or January.

Q. And if you were there in January, 1943, how long a time continuously before that had you worked for him?

A. Since June. And the year before, that would have been from June to September.

Q. And what salary were you getting?

A. As I recall, I believe it was about \$800 a month.

Q. And you were then 19 or 20 years old? 20 years old? [152]

A. That's right.

Q. How many months did you work for him at \$800 a month?

A. Oh, let's see; it would be June, July, August. Well, I worked there from June through December, and then the summer before I had worked up there from June till, say, the middle of September.

Q. At the same salary? A. I believe so.

Q. You were then 19, that would be—19 years old? A. That is right.

The Court: I have no further questions.

Mr. Watson: I would like to ask one or two more questions, your Honor.

(Testimony of Catherine Young Cobb.)

Cross-Examination
(Continued)

By Mr. Watson:

Q. Mrs. Cobb, have you had any conversation with an Internal Revenue agent in connection with this property?

A. In connection with this property?

Q. Yes.

The Court: Well, I think you should pinpoint it a little bit better than that, counsel, if there is such a conversation.

Q. (By Mr. Watson): Well, let me ask you, then, if you had any conversation with a Revenue Agent in the years 1950 or 1951, Would that [153] help?

A. I remember I talked to Mr. Cunningham at one time. Whether we said anything about the house I don't recall. I believe there was another gentleman with him. Oh, I have talked to him several times. I don't know that I said anything about the house to Mr. Cunningham or Mr. Mean or any of the other Internal Revenue people.

Q. You don't then recall that you told Mr. Cunningham that in substance and effect the government would never get this property from you?

A. I certainly never made any statement like that to Mr. Cunningham, no.

Mr. Watson: That is all.

The Witness: A. I don't recall ever having mentioned the house to him.

The Court: I have no further questions.

Mr. Wagener: That is all.

(Witness excused.)

Mr. Watson: We have, your Honor, our memorandum in connection with the validity of the 1945 assessments.

The Court: All right. We will take a recess at this time.

(Recess.) [154]

The Court: Proceed.

Mr. Wagener: Are we going to present that legal point now, your Honor?

The Court: In the brief period of recess I had the memorandum and looked at it. You have seen it?

Mr. Wagener: Yes, your Honor.

The Court: It would appear that in a case which was a Federal Supplement case, Commercial Credit vs. Schwartz, there was practically an identical situation and they held the assessment could not be attacked.

Mr. Wagener: One further thing I want to point out that I pointed out yesterday: that is, that nowhere in the government's proof so far is there any evidence that they sent a 90 day letter which is required to be sent before an assessment is made, and that during the period until ninety days after the receipt of such a letter has expired, the government can not make a valid assessment.

So far there is nothing in the proof that any 90 day letter was sent. Counsel was unable to show

anything from the exhibits he introduced yesterday to that effect.

Mr. Watson: The presumption is, your Honor, when an assessment is made that the 90 day letter—that all steps have been taken preceding the making of the assessment. The assessment is more or less in the nature of a judgment on those particular tax liabilities. [155]

The Court: In order to make a ruling on that, Mr. Wagener, I suggest that you make an offer of proof as to what you expect to prove so that that could be ruled upon.

Mr. Wagener: We offer to prove that Mr. Graham—rather, that neither Mr. Warren C. Graham, nor Agnes B. Graham were deed transferees of the Kincaid Company, and that as such no valid assessment of tax could ever have been made against them.

And that neither Warren C. Graham nor Agnes B. Graham ever received any 90 day letter from the Department of Internal Revenue, and from the government's exhibits, which purport to be a record of everything that was done, I respectfully submit there is no proof on their part that such letter was ever mailed to either Mr. or Mrs. Graham.

Mr. Watson: Your Honor, the United States objects to that proof on the ground that it is outside of the issues, and it is not relevant here. Further, it is our position that our proof does not need to go into the 90 day letter or any of those steps, that an assessment by law can not be made until such steps have been taken care of.

Mr. Wagener: It is up to the government to

prove that these steps were taken, in the face of testimony which I will offer that Mr. Graham nor Mrs. Graham ever received a 90 day letter in which case their time to contest the assessment would never have run. [156]

The Court: It would appear from this case that the requirement is that they pursue such administrative remedies as they have, if they contend the assessment was not proper; and it would appear from the cases cited that it is too late to attack those assessments. Objection to the offer of proof may be sustained.

Mr. Wagener: Provided—May I say this? That assumes the 90 day letter. If I can establish the first knowledge Mr. Graham had of this assessment was over a year later and the federal government has no proof of any 90 day letter, then his time to contest the assessment never expired. That is part of their steps, and I submit it is part of the government's proof to prove was properly taken.

The Court: Well, I still believe the objection should be sustained. You may recall that this assessment has also been held valid in another case which was tried in Los Angeles. While the decision doesn't discuss the point, this is the same assessment involved in this case that was involved in Los Angeles.

Mr. Wagener: That is true as to Warren Graham. I submit as to defendant Catherine Cobb, she is not bound by that case in Los Angeles because she wasn't a party therein. [157]

AGNES B. GRAHAM

called as a witness in her own behalf; sworn.

Direct Examination

By Mr. Wagener:

Q. You are Agnes Burke Graham?

A. Yes, sir.

Q. The wife of Warren C. Graham?

A. Yes.

Q. And you are one of the defendants in this action? A. Yes.

Q. For the purpose of saving time, Mrs. Graham, you heard the testimony yesterday of Warren C. Graham relative to the conveyance of this property at 6035 Wood Drive in Oakland, first to Mr. Hansen and finally to Catherine Young Cobb.

A. Yes.

Q. And if you were asked those same questions, would your testimony be substantially the same as to the conditions under which the deed was made?

A. Yes, sir.

The Court: Just a moment.

Mr. Watson: I think we will object to that.

The Court: The answer may go out. Make your objection.

Mr. Watson: We would like to object to that. I think Mrs. Graham's testimony should be in the record. [158]

Mr. Wagener: All right.

The Court: Objection is sustained.

Q. (By Mr. Wagener): Where were you, Mrs.

(Testimony of Agnes B. Graham.)

Graham, at the time that the property at 6035 Wood Drive was purchased?

A. I was in New York City.

Q. And when did you come to California after that?

A. I returned to California about December of 1945.

Q. And when did you first see the property at 6035 Wood Drive?

A. After I returned to California.

Q. And were you satisfied with the purchase of the property by your husband?

A. No, I was not. I was very displeased.

Q. For what reason?

A. Well, the house is not close to transportation. I do not drive an automobile, and it was inaccessible to public transportation and made it rather difficult on me. Furthermore, the type of house that he chose was larger and was situated in such a way it required a lot of work and would necessitate a lot of help.

Q. Whose suggestion was it that the property be transferred to Catherine Young Cobb, or for her benefit?

A. It was my suggestion during the period of early 1946, when my husband was practically commuting between California and Washington, D. C., on business relating to the shipyard. [159] I accompanied my husband the greater part of the time and I was a little worried because we flew most of the time.

(Testimony of Agnes B. Graham.)

Q. What did you suggest regarding the property?

A. I suggested that Warren and I give the house to Catherine since he and she had looked at it and apparently they both liked it.

Q. I show you Defendant's Exhibit D in evidence which is a letter from Warren C. Graham and Agnes B. Graham to Frank Hansen, and purporting to bear the acknowledgment of Frank Hansen. I will ask you, Mrs. Graham, if that is your signature appearing under Warren C. Graham's signature.

A. Yes, it is.

Q. "Agnes B. Graham." A. Yes.

Q. Do you recall on what date you signed that?

A. Well, evidently the date it is dated there in the letter.

Q. Is that your best recollection?

A. That is my best recollection.

Q. And showing you Defendant's Exhibit C, in evidence, that being a deed bearing date August 6, 1946, from Warren C. Graham and Agnes B. Graham, his wife, to Frank Hansen, a single man, I will ask you if that is your signature on that?

A. Yes, sir.

Q. Do you recall the date that that was signed by you? [160]

A. August 6th, 1946.

The Court: Well, do you recall that? Is that your answer or are you just reading the date from the deed?

A. Just reading the date from the deed; but I do

(Testimony of Agnes B. Graham.)

recall that date that it was signed in Mr. Stimmel's office.

The Court: Why do you recall that date?

A. There was a birthday in our family that particular date. Not our immediate family, but my immediate family, that recalls the date to my memory.

The Court: What birthday?

A. I have a sister who was born on the 6th of August.

The Court: How does that tie in with this date?

A. Well, it is just the date. I recall it was on my sister's birthday. I just recall that it was.

Q. (By Mr. Wagener): Mrs. Graham, I show you a tax collection waiver, one signed by Warren C. Graham—this is Government's Exhibit 4 in evidence—and two tax collection waivers introduced together as Government's Exhibit 6-D in evidence. These purport to bear your signature. I will ask you if you have ever seen those documents before.

A. Yes, sir.

Q. Do you recall when you first saw them, Mrs. Graham?

A. When an Internal Revenue agent came and brought these papers in—to the best of my recollection, it was in November of 1950, when my husband was at McNeill Island. [161]

Q. Do you know who the agent was from the Department of Internal Revenue?

A. No, I had never met the man before.

Q. Did he say anything to you about these waivers?

(Testimony of Agnes B. Graham.)

A. He asked me to sign this paper, and I told him I didn't take care of business matters, that any papers that were signed I signed them with my husband, and that I would like to take them up to my husband, whom I had intended visiting shortly, and discuss it with him, and he said if I would sign that it would possibly help him get some papers that were needed at the time for my husband's parole.

Q. That is, if you signed these waivers?

A. Yes.

Q. And did you subsequently visit your husband at McNeill Island?

A. Yes, and brought the papers.

Q. Do you recall about when that was?

A. I did visit him in November of 1950.

Q. And you took these papers at that time with you then? A. Yes, to Mr. Graham.

Q. Were they executed at that time?

A. No, sir. He said he wanted to think it over, and that the next time I visited, which was the early part of—it was in January, 1946, my next visit.

Q. Did you discuss them with him at that time? [162] A. Then——

Mr. Watson: Just a minute. Well, go ahead.

A. He evidently had given it consideration and told me that when I returned to California that I should go to the Collector's office, which was necessary to be there in person, to take the paper and sign it, it was all right to go ahead and sign it.

(Testimony of Agnes B. Graham.)

Q. (By Mr. Wagener): Is that when you signed these?

A. After I returned to California, shortly; either within three or four days or a week I came back, to the best of my recollection, I went over to the office of the Internal Revenue here in San Francisco on McAllister Street and signed the papers.

Q. What is your best recollection as to the date when that occurred?

A. Well, as best I can recollect, it must have been some time in January.

Q. In January of—— A. 1946.

Q. 1950 or 1951 we are talking about.

A. 1951.

Q. Was his waiver signed in your presence or not? A. No, sir.

Q. It wasn't? That was left with him?

A. The only paper I signed was the paper that was made out [163] to me. That was the only paper I signed. In San Francisco.

Mr. Watson: Excuse me. I think you asked her a second question, whether the waiver was left with Mr. Graham, and I don't believe she answered that.

Q. (By Mr. Wagener): Was his waiver left with him?

A. I recall that Mr. Graham's waiver was given him at the same time mine was given me.

Mr. Wagener: That is all.

(Testimony of Agnes B. Graham.)

Cross-Examination

By Mr. Watson:

Q. Mrs. Graham, you have testified in connection with this Exhibit D, which is the letter which purportedly established the trust with Frank Hansen, is that correct? A. That is right.

Q. Were you present when this letter was signed by Frank Hansen?

A. I don't know that, sir, but if it were necessary for me to be there to have the signature on the paper, I am sure I was there at the time.

Q. But you don't have any independent recollection of being present—— A. No.

Q. ——when Frank Hansen signed the paper? What was your answer again?

A. I said I have no knowledge. If it were necessary for me to be there when our signatures were put on the paper, I [164] am sure I was there, because my husband always took care of business details, and I signed lots of papers, and either had to be in the attorney's office or sometimes in my husband's office.

Q. On or about the date of August 1st did you have any conversation with Mr. Hansen in connection with this trust arrangement?

A. I don't recollect any conversation.

Q. Have you had any conversation at all with Mr. Hansen in connection with the trust arrangement? A. No, sir, not that I recall.

(Testimony of Agnes B. Graham.)

Q. You do know Mr. Hansen, though?

A. Yes, I do.

Q. Did you have any dealings with him at that time? A. No, I did not.

Q. And have you had any to speak of since that time? A. No.

Q. Was the plan to place the property in Mr. Hansen's name discussed with you?

A. No, it wasn't.

The Court: Read that last question and answer, please.

(Question and answer read.)

Q. (By Mr. Watson): Mrs. Graham, you testified in connection with the deed that is dated August 6th, the deed from you and your husband to Frank Hansen, a single man, is that [165] correct?

A. Yes.

Q. And you also testified that it is your recollection that you signed the deed on August 6, 1946?

A. Yes.

Q. Was it your testimony that you were in the office of Mr. Stimmel at that time?

A. I believe so, sir.

Q. Do you recall whether Mr. Stimmel drew up the deed? A. That I really don't recall.

Q. Did you have any conversation with Mr. Stimmel in connection with the deed before it was drawn? A. No, sir.

Q. Do you know of your own knowledge when the deed was actually recorded?

(Testimony of Agnes B. Graham.)

A. No, I do not.

Q. Did you have any subsequent occasion to visit Mr. Stimmel's office?

A. Not that I remember at the moment. Usually when I would go to Mr. Stimmel's office was when my husband requested I go and we had to sign papers that required my signature in connection with business or anything that required our joint signature.

The Court: Did you go to Mr. Stimmel's office when you signed the letter dated August 1st? [166]

A. That I do not recall, sir.

The Court: Well, do you know whether you went to Mr. Stimmel's office when you signed this deed?

A. I believe we did go to Mr. Stimmel's office.

The Court: What makes you sure of that and not the other?

A. Because I can't recall whether the letter was just signed at the shipyard. There were times I would sign some papers at the office in the yard that were necessary for my signature.

The Court: Were the letter and the deed signed at the same time or not?

A. I don't know, sir. I don't remember that.

Q. (By Mr. Watson): Did Mr. Graham tell you that this deed had been recorded at any time?

A. No, he usually didn't talk business dealings with me. I imagine he took care of it and he didn't mention it to me.

Q. Were you aware of the fact that he received

(Testimony of Agnes B. Graham.)

a deed from Mr. Hansen transferring the property to Catherine Young Cobb?

A. He mentioned it, but since my signature was not necessary he didn't go into very much detail about it. He probably did mention it.

Q. Did you participate in the conversation with Mrs. Cobb [167] that took place some time around May of 1946?

A. I have talked with her in California, but if you are referring to the telephone conversation her father had——

Q. Yes. A. No, I did not.

Q. Did you know about that conversation?

A. Yes, I knew he had put a call through to her. He would usually try to call her when she was away from home on her birthday.

Q. Did you know at that time there were outstanding tax liabilities against yourself and your husband?

A. I didn't know exactly what was wrong. I knew there was probably something wrong. Warren didn't mention it, but I knew he was possibly a little disturbed about things, the way that business was going in the yard.

Q. What led you to believe that this had any connection with the tax liability?

A. Well, he had mentioned there were some—I believe there were some Internal Revenue men at the yard at the time.

Q. At the time? A. I think there were.

Q. I believe that you testified in connection with

(Testimony of Agnes B. Graham.)

your own tax collection waiver, these waivers that were signed by you and purportedly dated November 21st, 1950, that you didn't sign those until you returned from visiting your [168] husband at McNeill Island, is that right?

A. To the best of my recollection, yes, sir.

Q. Did you visit your husband at McNeill Island on previous occasions?

A. November was the first time that I visited my husband.

Q. Were there subsequent visits?

A. As far as I can remember, I believe it was November and in January of 1951, and I believe the last visit was some time in June of 1951.

Q. But——

A. I know I made three visits in all.

Q. But it is your testimony, and you are reasonably sure, you didn't visit your husband before November, 1950?

A. Not that I recall, sir.

Mr. Watson: Your Honor, the deposition of the warden at McNeill Island Prison, a man by the name of Mr. Holmlund, was taken, and that deposition is on file with this court. At this time I would like to offer that deposition which shows the actual dates of Mrs. Graham's visits.

The Court: The warden?

Mr. Watson: Well, the man that was in custody of the records.

The Court: The deposition may be marked Government's Exhibit 15. [169]

(Testimony of Agnes B. Graham.)

Q. Is there any particular reason why you recognize this tax collection waiver?

A. It is the only one that I recall being brought, sir, the one the man brought while my husband was away. That is the only time any papers were brought to me personally. Usually my husband was contacted on those matters.

Q. And I believe it was your testimony on direct examination that you told your husband that if he signed his tax collection waiver that possibly it would help him with his parole?

A. It would in some way help for the papers that were necessary for his parole.

Q. Where did you get the idea that they would help him, that signing these papers would help him in that regard?

A. I don't know. I am just stating what the man said. That was part of his conversation.

Q. Who made the statement to you, do you recall?

A. The man that—the Internal Revenue agent who brought [170] the paper, the waiver.

Q. Do you happen to recall the conversation in any detail?

A. No, other than he said it would help my husband if the papers were signed for these necessary papers that were required at the time for his parole, which apparently was being held up.

Q. He didn't say anything about the parole being held up, did he?

(Testimony of Agnes B. Graham.)

A. He didn't say it was being held up. He said it would no doubt help.

Q. He didn't in any way threaten you?

A. No, I didn't say he threatened me.

Q. Now, Mrs. Graham, you considered this transfer of the property to Mrs. Cobb as a gift, didn't you?

A. As far as I was concerned, yes.

Q. And what was the reason for the gift? Do you happen to know?

A. My personal feelings were about the house that I just didn't care for it at all, and so far as I was concerned, I just didn't want it.

Q. Did your husband tell you his reasons for making the gift?

A. Well, he felt the same way I did because of the way he was traveling and living at the time. And he knew I was unhappy about the place. [171]

Q. When you were in Northern California in 1946 did you live in the house? A. Yes, sir.

Q. And when you were in Northern California in 1947 did you live in the house? A. Yes.

Q. And is the same true with respect to 1948?

A. Yes.

Q. And with respect to 1949? A. Yes.

* * *

(Testimony of Agnes B. Graham.)

Redirect Examination

By Mr. Wagener:

Q. Did you know as a matter of fact during this period of time whether or not Mr. Graham's parole was being held up because of the lack of a report from the Department of Internal Revenue? [172]

A. Well, from what I understood from our attorney, who was out here at the trial and who was then in New York, he had written me and told me that apparently the Internal Revenue was holding up certain papers, that if they had released them would have helped with my husband's parole. [173]

* * *

DANIEL F. CUNNINGHAM

called as a witness on behalf of the United States in rebuttal; sworn.

The Court: State your full name, please.

A. Daniel F. Cunningham.

Direct Examination

By Mr. Watson:

Q. Mr. Cunningham, where do you now reside?

A. In Oakland, California.

Q. What is your present employment?

A. I am a real estate broker and insurance broker.

(Testimony of Daniel F. Cunningham.)

Q. Where were you employed from the years 1946 to 1952?

A. I was employed as a deputy clerk in charge of seizures and sales for the Bureau of Internal Revenue.

Q. What was the nature of your duties during the time of your employment from 1946 to 1952?

A. To collect delinquent taxes primarily, and to seize properties for the government on which taxes were in jeopardy.

Q. In the course of that employment were you assigned the job of collecting the tax liabilities of the defendant, Warren C. Graham? [176]

A. Yes, sir.

Q. Were you actively engaged in collecting those accounts? A. Yes, sir.

Q. Were you familiar with the details of the Collector's office with regard to collection of those accounts? A. Yes, sir.

Q. Were you also present when the witness Thomas H. Graham testified yesterday?

A. Yes, I was.

Q. Then you heard his testimony with respect to the tax collection waivers dated November 21st, 1950? A. Yes, sir.

Q. As part of your duties as an employee of the Revenue Service were you responsible for securing tax collection waivers on the Graham account?

A. I was.

Q. Do you recall sending tax collection waivers

(Testimony of Daniel F. Cunningham.)

to the Collector at Tacoma, Washington, covering the 1942 income tax liability of Mr. Graham?

A. I do.

Q. Can you fix the approximate time such waivers were forwarded to Tacoma for signing?

A. It was in the fall of the year, I believe it was, November.

Q. Do you recall the testimony of Mr. Thomas H. Graham with [177] respect to the letter dated November 16, 1950? A. Yes.

Q. That is the one that—well, I will show you that letter. It is marked for identification purposes as Government's Exhibit 13. I will ask you to read it over.

A. I prepared this letter for the Collector's signature for transmittal to the Tacoma collection district.

Q. Is there anything in particular about the letter that makes you sure?

A. My initials, and the room number in which I was an occupant there at the left top corner of the letter.

Mr. Watson: We will again offer this exhibit for introduction into evidence.

The Court: What exhibit is that? No. 15 for identification?

Mr. Watson: Yes, your Honor.

Mr. Wagener: To which we object, your Honor, on the ground that the letter appears on its face to be a copy and is not the best evidence, and there

(Testimony of Daniel F. Cunningham.)

has been no foundation for the introduction of anything but the original.

The Court: Ask him about the original, where it went.

Q. (By Mr. Watson): Mr. Cunningham, do you have any knowledge of the whereabouts of the original?

A. The original was sent to the Tacoma office and that is a carbon copy of the original. [178]

Q. Do you recall that Mr. Thomas H.* Graham testified yesterday that he had at our request made an examination to try to find the original?

Mr. Wagener: To which we object. We object to the question as incompetent, irrelevant and immaterial as to what another witness testified.

The Court: I think so. Objection is sustained. Do you have the original of the letter?

A. No, I forwarded the original to the Tacoma District.

Mr. Watson: We again offer the letter.

Mr. Wagener: The objection is renewed.

The Court: Well, the witness is the writer of the letter, he said. He mailed the original and does not have the original and says this is a carbon copy. Isn't that a sufficient foundation for the admission?

Mr. Wagener: I think not where there has been no showing why the original is not still in the possession of the government. It may have been an oversight. I didn't hear the witness testify he signed same or saw it signed or that he mailed it.

(Testimony of Daniel F. Cunningham.)

The Witness: I am willing to testify on that question, your Honor.

Q. (By Mr. Watson): Mr. Cunningham, is this a carbon copy of a letter that you prepared for the Collector's signature and that was sent to Tacoma, Washington? [179]

A. That is correct. And the reason why my name didn't appear on this letter is that I did not have the authority to send a letter under my name to the Collector of another district. It had to emanate from the Collector himself

The Court: Was the letter mailed?

A. I mailed it.

The Court: You mailed the letter?

A. Yes.

The Court: The objection may be overruled. It may be admitted.

Q. (By Mr. Watson): You heard the testimony of Mr. Thomas Graham yesterday with respect to his letter dated November 22nd, 1950, which is Government's Exhibit—I believe it is 12.

A. Yes, I did.

The Court: Well, now, I have not looked at this letter before. I think there are a number of things in this letter that are not admissible here and would form no part of this.

I would think that the first paragraph was admissible, but the second, third and fourth paragraphs of the letter contain some personal opinions and a lot of other things that I do not believe to be admissible.

(Testimony of Daniel F. Cunningham.)

Therefore the ruling may be changed, and the first paragraph of the letter may be admitted, and I suggest that the clerk indicate on the letter that the last three paragraphs [180] are not admitted in evidence.

(Whereupon, Paragraph One of letter dated November 16, 1950, was received in evidence and marked United States Exhibit No. 13.)

Q. (By Mr. Watson): Mr. Cunningham, I will hand you Government's Exhibit 12 and Government's Exhibit 4 which is a tax collection waiver—No. 12 being the letter from Thomas H. Graham dated November 22nd, 1950, and I will ask you to examine those documents.

On the basis of your examination of these documents and your recollection, is Exhibit 4 the tax collection waiver, the one which you sent to Tacoma on November 16, 1950, which was returned to you by the Collector on November 22nd, 1950?

A. It is for the same tax, and to the best of my recollection, it is the same date.

Q. But you do recall that the waiver was dated November 21st, 1950?

A. I wouldn't recall the exact date, but I know it was sent in November.

Q. To the best of your recollection, that would be the correct date, is that correct?

A. That is correct.

Q. Were other tax collection waivers forwarded to the tax collector in Tacoma, Washington? [181]

(Testimony of Daniel F. Cunningham.)

A. Yes, they were.

Q. Approximately when were such other waivers sent, if you know?

A. In the early part of 1951, is my best recollection.

Mr. Watson: Your Honor, I have a letter that is addressed to the Hon. Clark Squire, Tacoma, Washington, which bears date of January 26, 1951, which I would like to have marked for identification.

The Court: It may be marked Government's Exhibit 15.

(Whereupon, letter, 1/26/51, referred to above, was marked for identification United States Exhibit No. 15.)

Mr. Watson: I also have a letter addressed to the Collector of Internal Revenue, San Francisco, dated April 6, 1951. It is signed "By L. M. Jones, for Clark Squire, Collector", in Tacoma. I would like to have that marked for identification.

The Court: Government's Exhibit 17 for identification.

(Whereupon, letter, 4/6/51, referred to above, was marked United States Exhibit No. 17 for Identification.)

Mr. Wagener: May we see them, counsel?

Q. (By Mr. Watson): Mr. Cunningham, I will ask you to examine these documents. Now, will you explain the contents of those letters? [182]

(Testimony of Daniel F. Cunningham.)

The Court: Well now, counsel, they haven't been offered in evidence and this is kind of a back-handed way of getting them in, isn't it? Either put them in evidence or not, one way or the other.

Q. (By Mr. Watson): Mr. Cunningham, after examining the letter marked as our Exhibit No. 15, can you state that that is a letter prepared under your direction, or a carbon copy of a letter prepared under your direction? A. Yes, sir.

Mr. Wagener: I object to the question as leading and suggestive.

The Court: Yes, it is leading, but——. What is the letter, Mr. Cunningham?

The Witness: It is a letter of transmittal requesting the Collector of Internal Revenue in Tacoma, Washington, to execute——

The Court (Interposing): Did you write the letter?

A. I wrote the letter of transmittal for the Collector's signature.

The Court: You wrote that letter?

A. Yes.

The Court: What is there on there to indicate that?

A. My initials and my room number.

The Court: The initials at the bottom of the letter?

A. At the top in the lefthand corner. [183]

The Court: And what else?

A. Well, the mere fact that the——

The Court: The room number?

(Testimony of Daniel F. Cunningham.)

A. Room 902.

The Court: That is your room number?

A. That was my room number.

The Court: And where was the original of the letter sent?

A. And the initials of my secretary on there.

The Court: Where was the original of the letter sent?

A. To Tacoma.

The Court: And you mailed it, did you?

A. I did.

Q. (By Mr. Watson): The original of this letter is not now in your possession, is that correct?

A. No, sir.

Q. What is Government's Exhibit 17, Mr. Cunningham?

A. That is a memorandum from the Tacoma office addressed to the Collector of Internal Revenue in San Francisco in which they are——

The Court (Interposing): I don't want to know "in which they are" anything. If it is going in evidence, all right, but if not——

The Witness: It is a covering letter sending the waiver back, the signed waiver. [184]

Q. (By Mr. Watson): Mr. Cunningham, does that letter carry your initials on it?

A. It carries my name and the indelible "D. Cunningham", which indicates when it arrived here it was sent to my attention.

The Court: Is it an original letter?

A. Yes, sir.

(Testimony of Daniel F. Cunningham.)

Q. (By Mr. Watson): Do you recall receiving this letter, Mr. Cunningham?

A. Well, I recall the fact that the request for the waiver was made and that it came back in the ordinary course of business. And the date it was received, and so forth, I couldn't state definitely I had received it on any particular day. But my secretary would open the mail and leave it on my desk, and it went into the file in the usual course, and so on.

Mr. Wagener: I move to strike the entire answer as not responsive to the question, which was whether or not he recalled receiving it.

The Court: It may go out.

Q. (By Mr. Watson): I again ask you, Mr. Cunningham, do you recall receiving this letter?

A. Well, I recall the fact that the request for waiver was made and that was received back in our office.

Mr. Wagener: I make the same motion with respect to [185] this answer.

The Court: It may go out.

Q. (By Mr. Watson): Mr. Cunningham, in the regular course of business in your office would you receive this letter? A. Yes.

Mr. Wagener: I object to the question as calling for an opinion on the part of the witness.

The Court: Oh, I think it does, counsel. You haven't yet offered Exhibit 16. Do you intend to offer it?

Mr. Watson: Yes, your Honor.

(Testimony of Daniel F. Cunningham.)

The Court: All right. Any objection?

Mr. Watson: That is the one he testified was prepared under his direction.

Mr. Wagener: As to Exhibit 16, we will object to it on the ground that it is a copy and I don't think a proper foundation has been shown why the original is not being offered.

The Court: The objection may be overruled. It may be admitted.

(Whereupon, letter dated January 26, 1951, was received in evidence and marked U. S. Exhibit No. 16.)

Q. (By Mr. Watson): On the basis of your examination of these documents and your recollection, can you say that they refer to collection waivers to which you previously testified [186] you sent forward for signature on or about January of 1951?

A. That's right.

Q. Mr. Cunningham, were you present in the courtroom yesterday when Mr. Ebeling, the accountant for the Graham Ship Repair Company, testified?

A. Yes, sir.

Q. Do you recall his testimony?

A. Yes, sir.

Q. Were you the revenue agent who questioned Mr. Ebeling about the withholding and insurance contribution tax rates?

A. I was.

Q. Approximately when was this conversation?

A. On December 5, 1946.

(Testimony of Daniel F. Cunningham.)

Q. Did he explain to you why the returns had not been filed?

A. Said Mr. Graham wouldn't let him file them.

Q. Prior to your conversation with Mr. Ebeling had you contacted Mr. Graham with respect to his tax liabilities?

A. Yes, as early as the first week in August.

Q. What was the purpose of that first contact?

A. I received a transferee assignment from the Kincaid Corporation from New York.

Q. Did you subsequently contact Mr. Graham with respect to his tax liabilities? A. Yes.

Q. When were these contacts made? [187]

A. The first contacts were made in the first week of August, and subsequently telephone calls were made in which sometimes I contacted his secretary, and on several occasions I contacted Mr. Graham himself by telephone. [188]

* * *

HENRY G. MEEHAN

called as a witness on behalf of the Government, in rebuttal; sworn. [195]

The Court: State your name, please.

A. Henry G. Meehan.

Direct Examination

By Mr. Watson:

Q. Mr. Meehan, what is your present employment?

A. With the Internal Revenue Service.

(Testimony of Henry G. Meehan.)

Q. Were you so employed in 1950 and 1951?

A. Yes, I was.

Q. What was the nature of your duties at that time?

A. Collecting delinquent federal taxes.

Q. In connection with those duties did you secure waivers from Mrs. Graham with respect to her income taxes for the year 1942?

A. Yes, I did.

Q. I will show you Government's Exhibit 6-D and ask you if you secured those waivers from Mrs. Graham?

A. Yes, these appear to be the ones that I secured. I could explain that a little bit, what occurred when these waivers came out, another deputy went over to Oakland to the Graham residence to have Mrs. Graham sign the waivers, and at that time she didn't refuse to sign them, but——

Mr. Knox (Interposing): We object to a conversation with which you were not personally familiar, Mr. Meehan.

The Court: Objection sustained.

Q. (By Mr. Watson): Mr. Meehan, did Mrs. Graham present these [196] waivers to you?

A. She brought them in, yes. It is my recollection it was late in the fall of '50.

Q. When she brought those waivers in they were signed by her, is that correct?

A. That is right.

Q. Do you have any reason to believe that the November 21st, 1950, date, the date stamped on the

(Testimony of Henry G. Meehan.)

top of those waivers, was not the date or approximate date that those waivers were signed?

A. No.

Mr. Wagener: I object to the question as calling for an opinion on his part.

The Court: I think it does call for an opinion. I didn't understand your answer, Mr. Meehan.

The Witness: I did——

The Court: Just a moment. Let me phrase it this way: You say Mrs. Graham brought them to the office?

A. Yes.

The Court: You say they were signed when they came in?

A. Yes.

The Court: Do you mean they were signed before they came in, or signed at the office in your presence?

A. She signed in the office in our presence.

Q. (By Mr. Watson): Mr. Meehan, had those waivers previously [197] been taken to Mrs. Graham? A. Yes, they had.

Q. Do you know of your own knowledge who took those waivers? A. Daniel Casey.

Q. Do you know of your own knowledge what happened at that time?

The Court: Well, he couldn't know if he wasn't there.

A. Only the report from the collection officer that was sent out on that.

Q. (By Mr. Watson): You did not alter or

(Testimony of Henry G. Meehan.)

change the date shown on that waiver, did you—those waivers? A. No.

Mr. Knox: I object to the question, assuming a fact not in evidence, that there is any date shown on it.

Mr. Watson: I believe there is a date. They answered some requests for admissions and said the date had been altered or changed.

The Court: I will permit the answer to this question. He may answer.

The Witness: State that question again?

The Court: Read it.

Q. (By Mr. Watson): You did not alter or change the date at any time?

A. No; I did not.

Q. In your conversations with Mrs. Graham, did you ever [198] suggest to her that her husband's parole might be held up if the waivers weren't signed? A. No.

Mr. Watson: That is all.

Cross-Examination

By Mr. Knox:

Q. You have the waivers, Mr. Meehan?

A. Yes; I have the waivers here.

Q. Mr. Meehan, did I understand your testimony to be that Mrs. Graham came into your office?

A. That is right.

Q. And signed these two in your presence?

A. That is right.

(Testimony of Henry G. Meehan.)

Q. And was someone else present?

A. Unless it would be Mr. Cunningham's secretary. She was in that office.

Q. You don't recall specifically whether or not someone was?

A. No; I don't. The secretary was there. She had adjoining offices there. I mean whether she was in the office at the time Mrs. Graham came in I don't know.

Q. Did she bring with her the waiver signed by Mr. Graham?

A. Not to my recollection. All she had was her own.

Q. Did that come in by mail or what?

A. That I don't know.

Q. You don't know?

A. No. I know she delivered this one personally because it [199] was the only time Mrs. Graham was in our office.

Q. At any rate, it is certainly true Mr. Graham didn't sign it in the office that day?

A. That is correct.

Q. I call your attention to these waivers, in which you will note all three are dated November 21, 1950, with a rubber stamp; is that correct?

A. Yes.

Q. Now, sir, will you examine those and tell me whether or not all three rubber stamps appear similar to you?

A. They do; yes.

Q. On the waivers signed by both Mr. Graham and Mrs. Graham?

A. That is correct.

(Testimony of Henry G. Meehan.)

Q. Will you explain to me how those waivers, which appear to be, or which the Government's evidence is, were signed some thousands of miles apart on different dates, have the same date?

Mr. Watson: I object to that as irrelevant.

The Court: If he can answer, let him answer.

A. No; I couldn't answer that question. The only waiver I was interested in was the one Mrs. Graham was bringing in herself at the time she went to Tacoma to visit Mr. Graham to get his advice before she would sign it.

Q. As to Mr. Graham's waiver, you don't know when that was dated? [200]

A. No; I do not know.

Q. As to Mrs. Graham's waiver, do you know when that was dated?

A. The only thing I could go by is November 21st, the date on the rubber stamp.

Q. You have no recollection of putting that date on there yourself?

A. No; I didn't put the dates on.

* * *

LYNN L. HARKNESS

called as a witness on behalf of the Government in rebuttal, sworn:

The Court: State your name, please.

A. Lynn L. Harkness.

Direct Examination

By Mr. Watson:

Q. Mr. Harkness, where are you now employed?

A. I am employed by the Internal Revenue Service.

Q. What is the nature of your present duties?

A. I am a special agent with the Intelligence Division, primarily investigating alleged fraud in income tax cases.

Q. In connection with that employment, are you familiar with the way that ordinary parole reports are prepared in [201] criminal cases, criminal tax cases?

A. Ordinarily, probation and parole—requests for probation or parole reports are made by the Probation Officer or Parole Officer, and the investigating agent who handles the case usually writes a report as requested.

The Court: Usually what?

A. Writes a report as requested, either parole or probation.

The Court: In other words, you get a communication from the Parole Officer asking for certain information about the particular defendant?

A. That is right.

(Testimony of Lynn L. Harkness.)

The Court: And you make a reply back concerning that? A. That is right.

Mr. Watson: Were you recently asked to examine the file in the criminal proceedings involving Warren C. Graham? A. Yes, sir.

Q. Were you asked to look at that file in particular in regard to a parole report?

A. That is right.

Q. And any documents relating to that parole report? A. That is right.

Q. And you have examined the file and are familiar with its contents? A. Yes, sir.

Q. Would you name and explain the documents that relate to the [202] parole report?

A. There was a letter dated April 24th, from the Parole Executive in Washington, D. C., addressed to the chief of the Intelligence Unit, requesting that a parole report be written in this subject case, and also requesting the status of the payment of the tax liabilities.

Q. Now, in that letter is any mention made of when Mr. Graham would be up for parole?

A. Yes.

Mr. Knox: I object to the question as calling for hearsay. I think the letter is the best evidence.

The Court: Sustained.

Q. (By Mr. Watson): All right, will you tell us what other documents are in there?

A. There is also a letter from the chief of the Intelligence Unit in Washington, D. C., addressed to Mr. Charles Davis, who at that time was special

(Testimony of Lynn L. Harkness.)

agent in charge in San Francisco, ordering a copy of the probation report.

Mr. Knox: We object. Again, I think the contents of the letter are hearsay.

The Court: Well, he is not giving the contents. I can't see the materiality at this time.

Q. (By Mr. Watson): Maybe I can shorten your testimony. On the basis of your examination of this file, was the parole report sent out in the ordinary course of business? [203]

A. Yes; it was.

Q. And there is nothing in the file that indicates there was any holdup at all on the report?

A. No, sir.

Mr. Watson: That is all.

Cross-Examination

By Mr. Knox:

Q. Mr. Harkness, I take it you are generally familiar with the parole procedures?

A. Yes, sir.

Q. And with the time in which a prisoner becomes eligible for parole?

A. I would say I am familiar so far as it applies to our office as a procedure, and the request for information from our office, and the procedure that the parole officer gets the information as he does.

Q. Then as nearly as I understand it, your particular function in this connection is to make reports when it is asked for in order to determine whether or not a man is eligible for parole?

(Testimony of Lynn L. Harkness.)

A. That is right.

Q. Are you regularly, in the usual and customary situation in these cases, given some information when the man will become eligible for parole?

A. In this particular case it was mentioned when it would be eligible. [204]

Q. Is that usual and customary?

A. I would say yes.

Q. And when you say "when he would be eligible," does that mean assuming the maximum time off for good behavior and things of that nature?

A. Yes.

Q. Does the department have any practice with respect to whether or not they try to furnish these reports before the earliest date the man is eligible for parole?

A. They are furnished upon request.

Q. How quickly after the request?

A. As soon as practicable.

Q. What is, in the general course of things, practicable for an investigation of this nature?

A. Well, it would depend some on the size of the case involved, I would say, and how much if any additional research or investigation would have to be made subsequent to the time of the original report that went in on the case.

Q. But would six months be considered a short time or a long time?

A. I think that would be considered a long time.

Q. How about four months?

(Testimony of Lynn L. Harkness.)

A. I think an average time would be probably right around 30 days.

Q. For a report such as this? [205]

A. All probation reports.

Q. You testified the report for Mr. Graham was requested on April 24th? A. That is right.

Q. And can you tell me when it was furnished?

A. The report was dated May 25, 1951. It was approved and forwarded by the chief, Intelligence Division, San Francisco, on May 28, 1951. [206]

* * *

WARREN C. GRAHAM

recalled as a witness in his own behalf; previously sworn: [207]

Direct Examination

* * *

Q. (By Mr. Wagener): I show you, Mr. Graham, an envelope bearing a special delivery stamp and air mail stamp, postmarked Athens, Georgia, May 22, 12M, 1948, and bearing return address Box 313, Ag Hill Mail Center, Athens, Georgia, addressed to Mr. Warren C. Graham, 6035 Wood Drive, Oakland, California.

Can you identify that envelope, Mr. Graham?

A. Yes, sir. This is the envelope in which my daughter—[208] I received from my daughter the two deeds which were from Frank Hansen to my daughter, and received by me on the 23rd of May, 1948.

(Testimony of Warren C. Graham.)

The reason why I recall this particular letter is the fact that I took the deeds down and had them recorded and put the receipt in the envelope.

Mr. Wagener: I will ask that this be marked for identification, your Honor.

The Court: For identification?

Mr. Wagener: And put into evidence.

The Court: It may be marked Exhibit L.

(Whereupon, envelope described above was received in evidence and marked Defendant's Exhibit L.)

Q. (By Mr. Wagener): Just one or two other questions, Mr. Graham. Yesterday, did you hear the testimony of Mr. Thomas Graham on behalf of the Government relative to waivers which he said you signed at McNeil Island? A. Yes, sir.

Q. I will call your attention to Government's Exhibit 4, in evidence, which is the waiver purportedly signed by you; and I will ask you if that is the waiver or one of the waivers which you signed for Mr. Thomas Graham at McNeil Island?

A. No, sir. The reason why I say that is because when he came to McNeil, I went into the reception room not with a guard [209] but with the case worker, and that particular waiver I recall specifically was for \$175, and I jokingly remarked with him that, "My God," I said, "Did you come all the way up from San Francisco for \$175? Must have spent a lot of money in plane fare."

(Testimony of Warren C. Graham.)

“No,” he said, “I am not from San Francisco. I am only from over here in Tacoma.”

Mr. Wagener: That is all I have. Defense rests.

Cross-Examination

By Mr. Watson:

Q. Mr. Graham, isn't it a fact that you signed more than one waiver while you were incarcerated in McNeil Island Penitentiary?

A. Yes, sir.

Q. And do you recall specifically what the other waivers were?

A. No. However, I recall this one specifically because I debated a long time before signing that waiver. I did not want to stay, upon what my wife had told me. I considered it very seriously and ponderously, whether it was worth while to get out and sign that waiver.

Mr. Watson: Your Honor, I have a tax collection waiver which bears the date of March 1st, and the date is in pencil; and it is purportedly signed by Warren Graham.

The Court: Well, what do you want?

Mr. Watson: I want to have it marked for identification. [210]

I want to examine Mr. Graham in connection with it.

The Court: All right, it may be marked Exhibit 18.

(Whereupon document referred to above was marked U. S. Exhibit No. 18 for identification.)

(Testimony of Warren C. Graham.)

Mr. Wagener: May I see it, counsel?

Mr. Watson: (Handing document to counsel.)

Q. Mr. Graham, I will show you Government's Exhibit 18, marked for identification, and ask you if that is your signature on that waiver?

A. Yes. What is the date of that? OK.

Q. On the basis of your examination of this waiver, Mr. Graham, can you state the amount involved?

A. That is for three hundred twenty-five and some odd cents—\$325.

Q. Can you give me the year involved?

A. 1943, it is.

Mr. Watson: I would like to offer this waiver in evidence.

Mr. Wagener: Objected to as incompetent, irrelevant and immaterial. I don't think it relates to any of the causes of action involved in this case, does it, counsel?

Mr. Watson: It relates in this sense: He has testified he signed a small waiver, and right around the date that this waiver bears. We have also had Mr. Cunningham's testimony that other waivers were sent up.

The Court: The defendant admits he signed it and it is [211] his signature. I think it may be admitted and take the same number.

* * *

[Endorsed]: Filed March 23, 1956. [212]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as shown by the records and designated by counsel for the parties: Except the Reporter's Transcript of Trial Proceedings:

Complaint.

Notice Lis Pendens.

Motion for Appointment of Receiver.

Order Appointing Receiver.

Notice of Hearing on Motion for Appointment of Receiver.

Answer of County of Alameda.

Answer by Disclaimer of Crofts and Anderson.

Answer of City of Oakland.

Order to Show Cause re Permanent Receiver.

Stipulation That No Receiver Be Appointed.

Order Dismissing Receiver.

Amendment to Complaint.

Stipulation for Amendment to Complaint and Answer to City of Oakland.

Stipulation for Amendment to Complaint and Answer to County of Alameda.

Dismissal by Plaintiff as to State of California and State Board of Equalization.

Motion of State of California for Leave to Intervene.

Complaint in Intervention by State of California.

Order Granting State of California Leave to Intervene.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Complaint.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Complaint in Intervention.

Filed Stipulation for Answer by State of California.

Order Adding Mercantile Acceptance Company as Party Defendant.

Answer of Mercantile Acceptance Company to Complaint.

Order Granting Plaintiff Leave to File Second Amendment to Complaint.

Second Amendment to Complaint.

Disclaimer and Withdrawal of Answer of Mercantile Acceptance Company.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Second Amendment to Complaint.

Interrogatories by United States to Warren C. Graham and Agnes B. Graham.

Request for Admissions by United States to Warren C. Graham.

Request for Admissions by United States to Agnes B. Graham.

Answer of Agnes B. Graham to Interrogatories by United States.

Answer of Warren C. Graham to Interrogatories by United States.

Answer of Agnes B. Graham to Request for Admissions.

Answer of Warren C. Graham to Request for Admissions.

Notice and Motion by United States for Order for Accounting or Appointment of Receiver and for Production and Discovery of Documents.

Order for Accounting and Production of Documents.

Affidavit and Accounting of Rents by Warren C. Graham.

Interrogatories by Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Harry W. Holmlund.

Stipulation of Facts re Reserves for Public Utilities Purposes by City of Oakland, a Municipal Corporation.

Stipulation of Facts re Liens of State of California.

Stipulation re Amendment of Pleadings of State of California.

Stipulation of Counsel Regarding Facts.

Third Amendment to Complaint.

Order for Complaint to Be Amended to Conform to Proof.

Findings of Fact and Conclusions of Law.
Judgment.

Decree of Foreclosure and Order of Sale.

Notice of Appeal by Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and

Amended Notice of Appeal by Warren C.
Graham, et al.

Certified Copy of Decree of Foreclosure With
Marshal's Return Thereto.

Designation of Record on Appeal by Warren
C. Graham, et al.

Bond on Appeal.

Designation of Record on Appeal by State
of California.

Designation of Record on Appeal by United
States of America.

Plaintiff's Exhibits: 1, 2, 3, 4, 4a, 5, 6a, 6b, 6c,
6d, 6e, 6f, 7a, 7b, 7c, 8a, 8b, 8c, 9, 10, 11, 12, 13, 14,
15, 16, 17 (identification) and 18.

Defendants' Exhibits: A, B, B1, C, D, E, F, G,
H1, H2, I (identification), J, K and L.

In Witness Whereof, I have hereunto set my hand
and affixed the seal of said District Court this 23rd
day of November, 1955.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing document, listed below, to be the original filed in this Court in the above-entitled case and that it constituted the supplemental record on appeal herein as designated by attorneys for the appellants:

Reporter's Transcript of Proceedings, Aug. 17 and 18, 1955.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 23rd day of March, 1956.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ MARGARET BLAIR,
Deputy Clerk.

[Endorsed]: No. 14,965. United States Court of Appeals for the Ninth Circuit. Warren C. Graham and Agnes B. Graham, His Wife, and Catherine Young Cobb, Appellants, vs. United States of America, State of California, City of Oakland and County of Alameda, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 6, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14,965

WARREN C. GRAHAM, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

STATEMENT OF APPELLANTS' POINTS ON
APPEAL AND DESIGNATION OF POR-
TIONS OF RECORD TO BE PRINTED

To the Clerk of the Above-Entitled Court:

Please Take Notice that the defendants and appellants herein intend to base their appeal upon the following points:

I.

The Court erred in refusing to admit testimony tending to show that the purported Kincaid Company transferee tax assessment was not valid.

II.

The tax collection waivers were obtained under duress and were therefore invalid.

III.

The Court erred in concluding that the conveyance by Warren C. Graham and Agnes B. Graham to Frank Hansen was a sham for the purpose of

defeating Federal tax liens, and that the subsequent transfer to Catherine Young Cobb was for the same purpose, or a gift.

Dated: March 9, 1956.

WAGENER, BRAILSFORD &
KNOX.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 13, 1956.

[Title of Court of Appeals and Cause.]

APPLICATION FOR LEAVE TO CORRECT
AN OVERSIGHT AND OMISSION UNDER
RULE 60 OF THE FEDERAL RULES OF
CIVIL PROCEDURE

Upon application of the United States of America under Rule 60 of the Federal Rules of Civil Procedure to this Court for leave to permit the United States District Court to correct an oversight and omission in the Decree of Foreclosure and Order of Sale made and entered September 13, 1955, as more particularly set forth in the Motion of the United States of American attached hereto, and good cause appearing therefor,

It Is Hereby Ordered that leave be and the same is hereby granted to the United States District Court to amend the said Decree of Foreclosure and

Order of Sale of September 13, 1955, in the manner as set forth in the said attached Motion.

/s/ WILLIAM DENMAN,
Chief Judge;

WALTER L. POPE,

/s/ HOMER T. BONE,
Judges of the Court of
Appeals.

[Endorsed]: Filed July 2, 1956.

No. 14,965

United States Court of Appeals
For the Ninth Circuit

WARREN C. GRAHAM and AGNES B.
GRAHAM, His Wife, and CATHERINE
YOUNG COBB,

Appellants,

VS.

UNITED STATES OF AMERICA, STATE OF
CALIFORNIA, CITY OF OAKLAND and
COUNTY OF ALAMEDA,

Appellees.

BRIEF FOR APPELLANTS.

SCHOFIELD, HANSON & JENKINS,

THOMAS M. JENKINS,

625 Market Street, San Francisco 5, California,

Attorneys for Appellants.

FILED

NOV 30 1956

PAUL P. O'BRIEN, CLERK

Subject Index

	Page
Jurisdictional Statement	1
Statement of Case.....	2
Issues	2
Statement of Facts.....	3
Argument	5
I. The Court Erred in Refusing to Admit Testimony Tending to Show That the Purported Kincaid Com- pany Transferee Tax Assessment Was Neither Valid Nor Proper	5
A. The Federal Tax Lien Is Based Upon a Proper Assessment and the Failure of the Commissioner to Proceed in the Matter Prescribed by the In- ternal Revenue Code Defeats the Validity of the Lien	5
B. The Failure of the Commissioner to Comply With the Statutory Directive by Congress Deprives the Commissioner or Any Other Officer of the Internal Revenue Service Authority to Maintain This Ac- tion and Failure of the District Court to Allow Evidence to Prove Failure of Compliance Is Error	7
II. The Tax Collection Waivers Were Obtained Under Duress and Were Therefore Invalid and the District Court Erred in Failing to Make Findings on Material Issues of Fact and Conclusions of Law on This Issue..	17
III. The Court Erred in Concluding That the Conveyance By Warren C. Graham and Agnes B. Graham to Frank Hansen Was a Sham for the Purpose of De- feating Federal Tax Liens, and That the Subsequent Transfer to Catherine Young Cobb Was for the Same Purpose, or a Gift?.....	19
Conclusion	22

Table of Authorities Cited

Cases	Pages
Commercial Credit v. Schwartz, 126 F. Supp. 728.....	10
Hedden v. Waldeck, 9 Cal. 2d 631, 72 Pac. 2d 114.....	21
Heinemann Chemical Co. v. Heiner (C.C.A. Pa. 1937) 92 Fed. 2d 344.....	9
In Re Holdsworth, 113 F. Supp. 878.....	6
Irish v. U. S., 225 Fed. 2d 3.....	17
Kweskin v. Finkelstein, 223 Fed. 2d 677.....	17
Maher v. Hendrickson, 188 Fed. 2d 700.....	17
Maxwell v. Campbell (C.C.A. 5, 1953) 205 F. 2d 461.....	8
Panther Rubber Manufacturing Co. v. C. I. R. (C.C.A. 1, 1930) 45 Fed. 2d 314.....	18
Ragsdale v. Paschal, 118 F. Supp. 280.....	21
Shapiro v. Rubens, 166 Fed. 2d 659.....	17
Shelton v. Gill (C.C.A. N.C., 1953) 202 Fed. 2d 503.....	13
Skelly Oil Co. v. Holloway, 171 Fed. 2d 670.....	21
Smith v. Gowan-Stobos Estate (1942) 41 N.E. 2d 630, 112 Ind. App. 11.....	9
Tooley v. C.I.R., 121 Fed. 2d 350.....	12
U. S. v. Barber, 24 Fed. Supp. 229.....	11
U. S. v. Continental National Bank & Trust Co. (Ill. 1939) 59 Sup. Ct. 308, 305 U.S. 398, 83 L. Ed. 249.....	8
U. S. v. De Martini, 53 Fed. Supp. 162.....	21
U. S. v. Fisher, 57 F. Supp. 410.....	12
U. S. v. Kane, 113 Fed. Supp. 304.....	11
U. S. v. Lamb, 26 Fed. 2d 830.....	11
U. S. v. Merrill, D.C. Calif. 1952, 107 Fed. 2d 836.....	9
U. S. v. Pacific Railroad (1880), 1 Fed. 97, 1 McCrary 1..	6
U. S. v. Southern Lumber Co. (C.C.A. 8, 1931) 51 Fed. 2d 956, affirmed 52 Sup. Ct. 197, 76 L. Ed. 574, 284 U.S. 680	18
U. S. v. The Pomare, 92 Fed. Supp. 185.....	16
Ventura Consolidated Oil Fields v. Rogan (C.C.A. Cal. 1936) 86 Fed. 2d 149 Cert. den. 57 Sup. Ct. 610.....	7, 8

Codes

Internal Revenue Code, 1939:	Pages
Section 272 (26 U.S.C.)	6, 12
Section 272(a) (26 U.S.C. 81)	4, 7, 9
Sections 275, 276(e) (26 U.S.C.)	18
Section 311 (26 U.S.C.)	7, 11, 12
Section 3653(a)	9
Section 3653(b)	9
Section 3670 (26 U.S.C.)	5, 12, 16
Section 3671 (26 U.S.C.)	5, 18
Section 3678 (26 U.S.C.)	1, 13, 15
Section 3679	10
Internal Revenue Code, 1954, Section 7403	15
Sections 1291, 1294 (26 U.S.C.)	2

Rules

Rules of Civil Procedure, Rule 52(a) (28 U.S.C.)	17, 21
--	--------

Miscellaneous

House Conference Report, House Report No. 2543, page 5344	16
9 Merten's Law of Federal Income Taxation 163.....	13
3 U. S. Code Congressional and Administrative News (1954), 4579, 5260, 5344	13, 14

No. 14,965

United States Court of Appeals For the Ninth Circuit

WARREN C. GRAHAM and AGNES B.
GRAHAM, His Wife, and CATHERINE
YOUNG COBB,

Appellants,

VS.

UNITED STATES OF AMERICA, STATE OF
CALIFORNIA, CITY OF OAKLAND and
COUNTY OF ALAMEDA,

Appellees.

BRIEF FOR APPELLANTS.

JURISDICTIONAL STATEMENT.

On August 17, 1951, appellees commenced this action in the United States District Court for the Northern District of California Southern Division to enforce alleged Federal tax liens.

Jurisdiction of the said District Court for the enforcement of tax liens is vested by the provisions of Section 3678, I.R.C. 1939, 26 U.S.C.

The cause was tried before the Honorable O. D. Hamlin, judge of the District Court. Judgment for appellees establishing liens and decree of foreclosure

and order of sale were entered on September 14, 1955. On October 14, 1955, appellants filed a notice of appeal.

The jurisdiction of this Court is invoked by and under the provisions of Section 1291, 26 U.S.C. and Section 1294, 26 U.S.C.

STATEMENT OF CASE.

The Collector of Internal Revenue sought to enforce tax liens against appellant for the year 1942 as a transferee of the Kincaid Company; to set aside a conveyance of property as a sham and fraud; and to have said lands sold and the proceeds applied to liens in the priorities as determined.

Appellant attempted to introduce evidence showing the invalidity of the transferee assessment and failure of the Collector of Internal Revenue to give notice and demand. The District Court excluded such evidence and found for the appellees.

ISSUES.

1. Is it error to exclude evidence which challenges the validity of the Government lien sought to be foreclosed and the assessment upon which it is based?
2. Did the District Court err in failing to find the waivers were signed under duress?

3. Did the District Court err in finding that the transfer of the land to Catherine Young Cobb was fraudulent?

STATEMENT OF FACTS.

Warren C. Graham and Agnes B. Graham were engaged in defense business during World War II, primarily manufacturing smoke screens and flame throwers for the Government. Their business enjoyed the expansion usual to wartime activities and the subsequent overexpansion and attendant tax difficulties which were familiar pattern in such industries. In 1945 the appellants Graham were residents of Oakland, California, and engaged in business there. Appellant Warren C. Graham purchased a home for his wife Agnes B. Graham, which she did not like and, appellants testified, it was subsequently given as a gift to Mr. Graham's daughter, Catherine Young Cobb.

The Commissioner of Internal Revenue purportedly assessed Federal income and excess profit taxes for the year 1942 in excess of \$16,000.00 each against appellants Graham as transferees of the Kincaid Company in the Second District of New York. That assessment was subsequently transferred to the Collector of Internal Revenue, San Francisco. This action was eventually brought to enforce such assessments together with others and an order and judgment entered that all property belonging to the Grahams and the home belonging to Catherine Young Cobb be sold and the proceeds applied to satisfaction of tax

liens. The lower Court held that the transfer of property to Catherine Cobb was either (a) fraudulent transfer to avoid tax liens, or (b) no more than a gift. In the Court below, the appellants denied that they were transferees of the Kincaid Company, denied liability for the transferee tax, and sought to introduce evidence challenging the validity of the assessment upon which the liens were based (transcript, pages 95, 96, 116).

The appellants further offered to prove that they had received no notice of the 1942 assessment and that no 90 day letter, as required by Section 272(a), I.R.C. 1939, 26 U.S.C. 81, had been sent to them. Although the Government introduced no evidence to the effect that such letter had been mailed, as required, the Court ruled that evidence of appellants on this subject was inadmissible (transcript, pages 188, 189.)

Prior to the filing of the suit appellant Warren C. Graham had been sentenced and served a period of time in the Federal Penitentiary at McNeil Island, Washington. During this time and while he was a prisoner, he and his wife were approached by members of the Internal Revenue Department with tax waivers, which would have the effect of prolonging the statute of limitations for filing of actions against the Grahams. It was the appellant's position that as a prisoner he was subjected to undue duress, as was his wife, by the understanding that his parole would be facilitated by signing of these documents. No finding of fact or law was made concerning the validity of said waivers on the grounds of duress, although

this was an extremely important issue to the appellants (transcript, pages 114, 151, 194, 226).

ARGUMENT.

I. THE COURT ERRED IN REFUSING TO ADMIT TESTIMONY TENDING TO SHOW THAT THE PURPORTED KINCAID COMPANY TRANSFEREE TAX ASSESSMENT WAS NEITHER VALID NOR PROPER.

A. The Federal Tax Lien Is Based Upon a Proper Assessment and the Failure of the Commissioner to Proceed in the Matter Prescribed by the Internal Revenue Code Defeats the Validity of the Lien.

In the proceeding below appellee sought to assert and enforce a tax lien provided for by Sections 3670, 3671, I.R.C. 1939, Title 26, U.S.C. The sections provide:

“Section 3670. Property Subject to Lien. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.”

“Section 3671. Period of Lien. Unless another date is specifically set by law, the lien shall arise at the time the assessment list was received by the Collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.”

By reading these two statutes in conjunction it is clear that there are three conditions precedent to the existence of any lien asserted under these provisions:

- (a) Liability of the taxpayer;
- (b) Receipt of the assessment list by Collector;
- (c) Demand for the payment of the tax.

In Re Holdsworth, 113 F. Supp. 878.

The condition precedent to the existence of a tax lien that the assessment list be received by the Collector of Internal Revenue before a lien is created impliedly supposes and demands that such assessment be properly made. The failure of the Commissioner to comply with the requirements, and limitations of Section 272, I.R.C. 1939, 26 U.S.C., prevents the lien from arising. Assessment of income tax by the assessor in the mode prescribed by law is essential to the creation of such lien.

U. S. v. Pacific Railroad (1880), 1 Fed. 97, 1 McCrary 1.

Section 272, I.R.C. 1939, 26 U.S.C., provides:

“Section 272. Procedure in General. (a) (1) Petition of the Tax Court of the United States. If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect to the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed, the taxpayer may file a petition with the Tax Court of the United States for redetermination of this deficiency. *No assessment of a deficiency in respect of the tax imposed by this chapter . . . shall be made . . . until such notice has been mailed to the taxpayer . . .*” (Emphasis added).

As Chief Judge Denman has held, the absence of the proper deficiency letter as prescribed by law defeats the validity of the assessment.

Ventura Consolidated Oil Fields v. Rogan
(C.C.A. Cal. 1936) 86 Fed. 2d 149 Cert. den.
57 Sup. Ct. 610.

As the very existence of the lien depends upon the existence of a proper assessment, the propriety of the lien in the assessment may be challenged by the person against whom the lien is sought and the matter determined in full by the District Court.

B. The Failure of the Commissioner to Comply With the Statutory Directive by Congress Deprives the Commissioner or Any Other Officer of the Internal Revenue Service Authority to Maintain This Action and Failure of the District Court to Allow Evidence to Prove Failure of Compliance Is Error.

As noted subsequently, when the Commissioner chooses to proceed against a transferee under the provisions of Section 311, I.R.C. 1939, 26 U.S.C., his action is subject to the same provisions and limitations as in the case of deficiency proceeding against the "original" taxpayer.

There is no question but what the provisions of Section 272(a) I.R.C. 1939, 26 U.S.C., apply and that the Commissioner is bound to comply with this section.

Section 272(a) I.R.C. 1939, 26 U.S.C., provides:

"Section 272. Procedure in General. (a) (1) Petition of the Tax Court of the United States. If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect to

the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to a taxpayer by registered mail. Within ninety days after such notice is mailed, (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with the Tax Court of the United States for redetermination of this deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and *no distraint or proceeding in Court* for its collection *shall be made*, begun, or prosecuted until such notice has been mailed to the taxpayer . . .” (Emphasis added).

“Notwithstanding the provisions of Section 3653(a) the making of such assessment of a beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.”

The purpose of this provision is to provide a method for review of tax *liability* before assessment and compulsory collection and to safeguard against erroneous action by the Commissioner and to suspend his authority to proceed with collection until the person sought to be subjected to payment has been notified and given an opportunity to petition the Tax Court for review.

Maxwell v. Campbell (C.C.A. 5, 1953) 205 F.2d 461;

Ventura Consolidated Oil Fields v. Rogan (supra);

U. S. v. Continental National Bank & Trust Co. (Ill. 1939) 59 Sup. Ct. 308, 305 U.S. 398, 83 L. Ed. 249.

It has also been held that the directives to the Commissioner in this section are mandatory.

Heinemann Chemical Co. v. Heiner (C.C.A. Pa. 1937) 92 Fed.2d 344;

Smith v. Gowan-Stobos Estate (1942) 41 N.E. 2d 630, 112 Ind. App. 11.

Congress has in certain instances given taxpayers a right to prohibit collection of taxes by injunction. That exception (I.R.C. 3653(a)) does not however apply to transferees of the type with which we are here concerned who are governed by the provisions of I.R.C. 3653(b). In any event, the Congress did not intend in any way to limit the rights of transferees and appellants contend that the District Court should have taken evidence to prove the Commissioner's failure to comply with Section 272(a), with consequent dismissal of this action.

U. S. v. Merrill, D.C. Calif. 1952, 107 Fed. 2d 836.

But what was the position of the appellees in the Court below? Mr. Watson, attorney for the Government, started the action by stating (transcript, page 97):

If your Honor please it is long past the time that you can contest these taxes . . . they can't be questioned by anybody now.

The Government over the strenuous objections of the defendants sought and obtained admission of a purported summary of taxpayers accounts (transcript, pages 95, 96). This document (plaintiffs' exhibit No.

5) was later used by the Government in an attempt to substantiate their assumed following of the requirements of the Internal Revenue Code for assessment purposes. As shown, however (transcript, page 122), there was no such 90 day deficiency letter:

Mr. Wagner. Can you show me, counsel, where it says here a letter, a 90 day letter was sent and what date it was sent?

Mr. Watson. I can't show you there. I am wrong on that. This doesn't show it, either.

The Court. Well, where is it shown, counsel?

Mr. Watson. Your Honor, it isn't shown.

Again, (transcript, page 188) the attorney for the Government made the statement that there was a presumption that a 90 day letter had been forwarded, although there was no evidence to that effect. The appellants made an offer of proof to show that such was not the case. This was denied by the Court, purportedly, on the authority of *Commercial Credit v. Schwartz*, 126 F. Supp. 728, dealing with I.R.C. 3679. A careful reading of that case, however, and a search of the background of transferee tax cases, must lead to the conclusion that appellants, similar to all other transferees, have a basic right to contest the validity of the assessment and that the Courts have never denied such right. This becomes apparent when the history of transferee tax liability is considered.

Prior to 1926, the liability of a transferee of the assets of a taxpayer could be determined and enforced only by foreclosing or pursuing a remedy now known as the "trust fund" doctrine.

In essence, this was a procedure by the Collector analogous to a creditor's bill in equity wherein the Government sought to establish that the distribution of the taxpayer's assets were under such inequitable conditions that the Court should impose a trust upon the assets received by the transferee and order the assets sold for the benefit of the Government. It was necessary to show that the transferee had received the assets, that they were obtained for little or no consideration and that the transfer rendered the transferor insolvent.

U. S. v. Kane, 113 Fed. Supp. 304.

In these "trust fund" proceedings the burden of proof is on the United States to prove the liability of the transferee. However, the purported transferees were allowed to question the existence of their liability.

U. S. v. Lamb, 26 Fed. 2d 830;

U. S. v. Barber, 24 Fed. Supp. 229.

In 1926, Congress enacted Section 311, I.R.C. 1939, 26 U.S.C., which, in effect, allowed the Commissioner to proceed against recipients of a taxpayer's assets in the same manner as if the recipient was the original taxpayer.

Section 311 provides:

"Section 311. Transferred Assets.

a. Method of Collection. The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of defi-

ciency in a tax imposed by this chapter (including the provisions in case of delinquency and payment after notice and demand, of the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) Transferees. The liability, at law and equity, of a transferee of property of a taxpayer, in respect to the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon a taxpayer by this chapter.”

The wording of this statute makes it evident that the intent of the Congress was to impose a procedure and remedies previously available against original taxpayers to transferees; in a sense, to treat them as original taxpayers.

Tooley v. C.I.R., 121 Fed. 2d 350.

It is to be noted that the limitations of the section providing for assessment were also to apply. This new procedure was held not to be exclusive and the Commissioner could still, if he so chose, proceed against a transferee under the “trust fund” doctrine.

U. S. v. Fisher, 57 F. Supp. 410.

However, if the Commissioner of Internal Revenue elects to proceed under the authority of Section 311, he is bound to comply with the requirements and limitations imposed by Section 272, I.R.C. 1939, 26 U.S.C. The lien provided for by Section 3670 would now also be applicable to transferees under Section 311.

The question presented on this appeal is whether a transferee may challenge the existence of liability of the transferee in an action to foreclose the lien asserted against him. In any action brought to recover taxes due to taxpayer, the taxpayer should have the right to contest tax liability in order to determine if there is a deficiency. 9 *Merten's Law of Federal Income Taxation* 163.

Appellants contend that the liability of a transferee may be contested in an action to foreclose a lien, especially where the transferee had no opportunity afforded him to contest a deficiency allegedly assessed by the Commissioner of Internal Revenue. A transferee cannot be rendered liable without a showing that in law and equity he is bound to pay the taxpayer's obligation.

Shelton v. Gill (C.C.A. N.C., 1953) 202 Fed. 2d 503.

Appellant directs the attention of the Court to 3 *U. S. Code Congressional and Administrative News* 4579, 5260, 5344 (1954). The statute involved is Section 3678, I.R.C. 1939, 26 U.S.C., which gives the District Court jurisdiction to hear and adjudicate *all* matters involved therein and finally determine the merits of all liens upon the property in question. The statute provides:

“Section 3678. Civil Action to Enforce Lien on Property (a) Filing. In any case where there has been a refusal or neglect to pay any tax and it has become necessary to seize and sell property and rights to property, whether real or personal,

to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a District Court of the United States, to enforce a lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(c) Adjudication and Decree. The said Court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the Court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon property and rights to property in question, and, in all cases where a claim or interest of the United States is established, may decree a sale of such property and rights to property, by the proper officer of the Court, and a distribution of the proceeds of such sale according to the findings of the Court in respect to the interests of the parties and of the United States."

A major factor in determining whether or not the taxpayer may challenge the essential existence of the lien in foreclosure proceedings under this statute can be found by reference to the House and Senate Committee Reports prepared to accompany HR8300, "A Bill to Revise the Internal Revenue Laws of the United States". As reported in 3 *U. S. Code Congressional and Administrative News* (1954):

House Committee Report at page 4579:

“Section 7403. Action to Enforce Lien or to Subject Property to Payments of Tax.

This section contains no material change from existing law, except for the addition of the express provision in Subsection (c) that the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid for purposes of the adjudication in an action to enforce the lien of the United States or to subject property of the delinquent taxpayer to the payment of the tax.”

Section 7403 mentioned above is Section 7403, I.R.C. 1954, 26 U.S.C., and is substantially the same as Section 3678, I.R.C. 1939, 26 U.S.C.

“Senate Committee Report, reported at page 5260:

Section 7403. Action to Enforce Lien or Subject Property to Payment of Tax. This section corresponds to that of the House except for one amendment, and, as amended, contains no material change from existing law. Your committee's amendment strikes from subsection (c) of the House bill a specific provision that the assessment of a tax upon which the lien of the United States is based shall be conclusively presumed to be valid for the purposes of the adjudication in an action to enforce the lien of the United States or to subject property of the delinquent taxpayer to the payment of the tax. The elimination of this provision is not designed to change the effect under existing law given to the assessment in such adjudication”.

House Conference Report, House Report No. 2543, at page 5344:

“Amendment No. 515: The House bill contained a specific provision that the assessment of a tax upon which the lien of the United States is based shall be conclusively presumed to be valid for purposes of adjudication in an action to enforce the lien of the United States or to subject property of the delinquent to the payment of the tax. The Senate amendment eliminated the provision, thereby restoring existing law. The elimination of this provision is not designed to change the effect under existing law given to the assessment in such an adjudication. The House recedes.”

The Government's lien for taxes does not stand on any conception of sovereignty but upon specific authority of Section 3670, I.R.C. 1939, 26 U.S.C.

U. S. v. The Pomare, 92 Fed. Supp. 185.

It is abundantly clear that it was the intent of the Congress to leave the validity of the assessment subject to attack in a proceeding to foreclose tax liens in a situation where the United States has, at its own initiative, instituted the action.

Therefore the failure of the District Court to admit evidence purporting to contest the validity of the assessment upon which the tax lien is based is error and the decision should be reversed.

II. THE TAX COLLECTION WAIVERS WERE OBTAINED UNDER DURESS AND WERE THEREFORE INVALID AND THE DISTRICT COURT ERRED IN FAILING TO MAKE FINDINGS ON MATERIAL ISSUES OF FACT AND CONCLUSIONS OF LAW ON THIS ISSUE.

Rule 52(a) of the Federal Rules of Civil Procedure requires that:

“In all the actions tried upon the facts without a jury, the Court shall find the facts specially and state separately as conclusions of law thereon . . .”

Findings of fact on every material issue are mandatory and there must be such subsidiary findings of fact as will support the ultimate conclusion reached by the Court.

Kweskin v. Finkelstein, 223 Fed. 2d 677, 678.

The trial Court findings shall be so explicit as to give the reviewing Court a clear understanding of the basis of the trial Court's decision and to enable the reviewing Court to determine the grounds upon which the trial Court reached its conclusions.

Maher v. Hendrickson, 188 Fed. 2d 700;

Irish v. U. S., 225 Fed. 2d 3, 8.

The failure to find an ultimate fact is deemed a finding against the party having the burden of proof, and, on appeal, all facts not embraced in special findings will be regarded as not proved by the party having the burden of proof.

Shapiro v. Rubens, 166 Fed. 2d 659, 667.

The Court failed to make findings on the issue of duress and the execution of the waivers. On the evidence before it, the Court should have found that

the purported waivers were obtained under duress and were not voluntary relinquishments of known rights.

Appellant Warren C. Graham testified (114) that he was imprisoned at McNeil Island and that it was his belief that the signing of these waivers would expedite the reports necessary for his parole (226). Appellant Agnes B. Graham testified (194) that she was told that the execution of these waivers were to facilitate obtaining the necessary papers for her husband's release (201).

There could be no waiver where it is obtained by duress or fraud. The party relying on the waivers assumes a burden of proof as to the belief of the party signing the waiver.

Panther Rubber Manufacturing Co. v. C. I. R.

. (C.C.A. 1, 1930) 45 Fed. 2d 314;

U. S. v. Southern Lumber Co. (C.C.A. 8, 1931)

51 Fed. 2d 956, affirmed 52 Sup. Ct. 197, 76

L. Ed. 574, 284 U.S. 680.

The testimony of the agents of the United States, of course, was in a small way inconsistent with the testimony of appellants. However, the issue of the validity in existence or the waivers and their effect was raised in the answer to the complaint (28) as a second and separate defense and appellants maintain that the Court erred in failing to find upon the issue.

If these waivers were signed under duress this action would be barred by the provisions of Sections 275, 276(c) and 3671, I.R.C. 1939, 26 U.S.C. (Statutes of Limitations). This failure to find upon the valid-

ity of these waivers is therefore a failure of findings upon material issue.

III. THE COURT ERRED IN CONCLUDING THAT THE CONVEYANCE BY WARREN C. GRAHAM AND AGNES B. GRAHAM TO FRANK HANSEN WAS A SHAM FOR THE PURPOSE OF DEFEATING FEDERAL TAX LIENS, AND THAT THE SUBSEQUENT TRANSFER TO CATHERINE YOUNG COBB WAS FOR THE SAME PURPOSE, OR A GIFT?

The question of whether the transfer of the property was fraudulent or whether it was a valid gift is of great importance and the question should have been independently found, not, as it was, in the alternative.

The tax lien based upon the withholding taxes of the Graham Ship Repair Company for the years 1945 and 1946, assessed against Warren and Agnes Graham, did not arise until December 6, 1946, the date the jeopardy assessment list for those taxes was received by the Collector of Internal Revenue.

Warren Graham testified, and his testimony was corroborated by other evidence, that his wife had disapproved of a house he had purchased, without her knowledge, in 1945 but that his daughter, Catherine Young Cobb did like the house. For those reasons he decided to make a gift of the house to his daughter.

Mrs. Graham approved and on May 16, 1946, by telephone, the Grahams notified Catherine of their intention. Mrs. Cobb told them that she could not take immediate possession and control as she desired to stay in Georgia until her husband finished his studies

there. The Grahams thereupon conceived of the idea of creating a trust for her by transferring the legal title to Frank Hansen until such time as he, as trustee, should decide it was convenient for Catherine Cobb to take possession and control.

The trust agreement was executed by the Grahams and Frank Hansen on August 1, 1946. The deed transferring the property to Frank Hansen was drawn on August 7, 1946, and recorded on December 7, 1946. Frank Hansen thereafter, on May 28, 1948, transferred legal title to Catherine whose husband, by this time, had finished his studies and no longer had to stay in Georgia.

In this action the United States sought to foreclose a lien allegedly arising in 1945, the aforementioned 1942 transferee tax lien. Admittedly, such a lien, if it legally existed, would be a charge against the transferred lands in the hands of a donee. However, as pointed out in detail, *supra*, the purported transferee tax assessment and consequent lien were unfounded, totally invalid and of no effect.

The second lien the United States sought to foreclose was the lien based upon the tax assessment predicated upon the withholding tax liability of the Graham Ship Repair Company and that lien did not come into existence until December 6, 1946, several months after the creation of the trust for Catherine Cobb. There was therefore no tax lien or known liability outstanding against Warren or Agnes Graham at the time of their gift to Catherine Cobb and, inasmuch as Warren Graham had a net worth value exceeding \$300,000.00 at the time the trust was created,

the gift of a \$30,000.00 house would not render him insolvent.

Yet this is precisely what the United States alleged although appellee produced no testimony or evidence substantiating its charge of sham and fraud; in fact, the record reveals that appellee attempted to prove *either* a sham or a gift and put far more emphasis on the gift aspect, concealing the importance and necessity of making a distinction. As a result, the findings of the lower Court read, in part,

“The conveyance of the above-described property from Frank Hansen to Catherine Young Cobb was a sham and made for the same purpose as was the conveyance from the Grahams to Hansen, namely, to conceal the Graham’s interest therein. In any event the transfer to Catherine Young Cobb was no more than a gift.”

The purpose of Rule 52(a), Rules of Civil Procedure, 28 U.S.C., providing that the trial Court in a non-jury case, shall find the facts especially, is intended to aid appellate Courts by giving a clear understanding of the bases of the court’s decision.

Skelly Oil Co. v. Holloway, 171 Fed. 2d 670.

Furthermore, the appellee alleged a fraudulent transfer and it is a basic rule that to establish fraud the evidence must be clear and convincing and the burden of proof is on the party asserting the fraud.

United States v. De Martini, 53 Fed. Supp. 162;

Hedden v. Waldeck, 9 Cal. 2d 631, 72 Pac. 2d 114;

Ragsdale v. Paschal, 118 F. Supp. 280.

Appellants submit that the finding of the District Court that the transfer of the land was a sham and fraud was based on the erroneous assumption that the transferee tax lien for 1942 taxes against the Kincaid Company was valid; that, in law and fact, the said lien did not exist and there is no evidence to support the finding of a fraudulent transfer and the finding was error.

CONCLUSION.

In summary, it is the contention of the appellants that the Court below erred in (a) failing to allow the appellants to introduce evidence that no tax liability existed because of failure to give him the necessary 90 day deficiency notice, (b) failure to find that the statute of limitations applied because tax waivers were signed under duress while appellant was a prisoner at McNeil Island, Washington, and (c) failure to make a proper finding on the gift of appellant's home to his daughter Catherine Young Cobb. For the foregoing reasons it is respectfully submitted that the judgment herein should be reversed.

Dated, San Francisco, California,
November 14, 1956.

SCHOFIELD, HANSON & JENKINS,
THOMAS M. JENKINS,
Attorneys for Appellants.

No. 14,965

IN THE

United States Court of Appeals
For the Ninth Circuit

WARREN C. GRAHAM and AGNES B.
GRAHAM, His Wife, and CATHERINE
YOUNG COBB,

Appellants,

VS.

UNITED STATES OF AMERICA, STATE OF
CALIFORNIA, CITY OF OAKLAND and
COUNTY OF ALAMEDA,

Appellees.

On Appeal from the Judgment of the United States District Court
for the Northern District of California.

BRIEF FOR THE UNITED STATES.

CHARLES K. RICE,

Assistant Attorney General.

LEE A. JACKSON,

A. F. PRESCOTT,

LOUISE FOSTER,

Attorneys, Department of Justice,
Washington 25, D. C.

LLOYD H. BURKE,

United States Attorney,

CHARLES ELMER COLLETT,

Assistant United States Attorney.

FILED

JAN 25 1957

Subject Index

	Page
Opinion below	1
Jurisdiction	1
Questions presented	3
Statute involved	3
Statement	4
Summary of argument	11
Argument	15
I. Introductory statement as to the District Court's decree ordering sale of the property to which tax liens had attached and designating the order for payment of tax claims out of the sale proceeds	15
II. The assessment of the 1942 income and excess profits taxes which was made against Mr. and Mrs. Graham, as transferee, was valid and cannot be attached in this suit	17
III. The District Court correctly held that the alleged transfer of the property involved here was a sham and did not prevent the federal tax liens from attaching thereto	23
IV. The Government is not barred from collecting any tax claim involved in this suit	28
Conclusion	32
Appendix	

Table of Authorities Cited

Cases	Pages
Austin Co. v. Commissioner, 35 F. 2d 910	17
Bull v. United States, 295 U.S. 247	18
Citizens Nat. Trust & S. Bank of Los Angeles v. United States, 135 F. 2d 527	18
Commercial Credit Corp. v. Schwartz, 126 F. Supp. 728 ...	19
Harriton v. Lucas, 41 F. 2d 429	18
Holdsworth, In re, 113 F. Supp. 878	21
Irish v. United States, 225 F. 2d 3	31
Maher v. Hendrickson, 188 F. 2d 700	31
Maxwell v. Campbell, 205 F. 2d 461	22
Phillips v. Commissioner, 283 U.S. 589	18
United States v. Chemical Foundation, 272 U.S. 1	17
United States v. Graham, 96 F. Supp. 318, affirmed sub nom. State of California v. United States, 195 F. 2d 530, certiorari denied, 344 U.S. 831	20
Ventura Consolidated Oil Fields v. Rogan, 86 F. 2d 149, certiorari denied, 300 U.S. 672	22

Statutes

Internal Revenue Code of 1939:	
Sec. 272 (26 U.S.C. 1952 ed., Sec. 272)	19, App. i
Sec. 275 (26 U.S.C. 1952 ed., Sec. 275)	App. ii
Sec. 276 (26 U.S.C. 1952 ed., Sec. 276)	28, App. iii
Sec. 311 (26 U.S.C. 1952 ed., Sec. 311)	19, App. iii, iv
Sec. 3670 (26 U.S.C. 1952 ed., Sec. 3670)	18, 21, App. iv
Sec. 3671 (26 U.S.C. 1952 ed., Sec. 3671) ...	18, 21, App. iv, v
Sec. 3672 (26 U.S.C. 1952 ed., Sec. 3672)	27, App. v
Sec. 3678 (26 U.S.C. 1952 ed., Sec. 3678) .	2, 15, 22, App. v, vi
Internal Revenue Code of 1954, Sec. 7403 (26 U.S.C. 1952 ed., Supp. II, Sec. 7403)	
	22

Miscellaneous

Federal Rules of Civil Procedure, Rule 52	31
---	----

No. 14,965

IN THE

**United States Court of Appeals
For the Ninth Circuit**

WARREN C. GRAHAM and AGNES B.
GRAHAM, His Wife, and CATHERINE
YOUNG COBB,

Appellants,

vs.

UNITED STATES OF AMERICA, STATE OF
CALIFORNIA, CITY OF OAKLAND and
COUNTY OF ALAMEDA,

Appellees.

**On Appeal from the Judgment of the United States District Court
for the Northern District of California.**

BRIEF FOR THE UNITED STATES.

OPINION BELOW.

No opinion was rendered by the District Court. Its findings of fact and conclusions of law (R. 50-64) are unreported.

JURISDICTION.

This is a foreclosure suit brought by the United States against Warren C. Graham, Agnes Graham and

Catherine Young Cobb, all appellants here. The State of California, the County of Alameda, the City of Oakland, California, and the State Board of Equalization were also named defendants along with certain other persons who need not be considered here. The complaint, which was filed by the United States on January 2, 1952, alleged that Warren C. Graham and Agnes Graham owed income tax and federal withholding taxes, penalties and interest for 1945 and 1946, and also owed income and excess profits taxes for 1942 as transferee of the Kincaid Company; that the United States has prior and paramount liens upon property belonging to the Grahams and prayed that the District Court decree a sale of such property and distribute proceeds in accordance with its findings as to the interest of the United States. (R. 3-22.) This complaint was amended three times, primarily to correct dates and amounts involved and to otherwise conform to the proof, but in the second amendment Frank Hansen was also named as a defendant, and it was alleged therein that one piece of residential property was conveyed to him, and subsequently by him to Catherine Young Cobb, to defraud the Government in collecting taxes and it was prayed that such conveyances be set aside. (R. 21-22, 29-32, 43-47.) Answers were filed to the complaint and to the amendments thereto. (R. 22-29, 32-33.) Jurisdiction was conferred on the District Court by Section 3678 of the Internal Revenue Code of 1939. Judgment was entered by the District Court on September 14, 1955 (R. 65-68), and a decree of foreclosure and order of sale were also filed the same day (R. 68-72). Notice of

appeal was filed on October 14, 1955, and an amended notice of appeal was also filed on October 26, 1955. (R. 73-74.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

QUESTIONS PRESENTED.

1. Whether the assessment for 1942 income and excess profits taxes made against Warren and Agnes Graham, as transferees of the Kincaid Company, was valid.

2. Whether the District Court erred in finding that the conveyance by Mr. and Mrs. Graham of their residence to Frank Hansen and his subsequent transfer to Catherine Young Cobb were shams, made for the purpose of defeating the tax liens, and did not prevent the federal tax liens attaching thereto.

3. Whether this suit is timely insofar as it involves the 1942 taxes assessed against the Grahams as transferees. This depends on whether the collection waivers were obtained from the Grahams under duress and must be given no effect as appellants contend.

STATUTE INVOLVED.

The pertinent provisions of the statute involved are set forth in the Appendix, *infra*.

STATEMENT.

The facts as found by the District Court (R. 50-60) may be summarized as follows:

This is an action to foreclose the federal tax liens which arose as a result of the assessment of taxes against Warren C. Graham and his wife, Agnes B. Graham, of Oakland, California, as set out herein. (R. 50.)

On March 26, 1945, the Collector of Internal Revenue for the Second District of New York received the assessment list carrying assessments of 1942 income and excess profits taxes against Warren C. Graham, as transferee of the Kincaid Company, in the amount of \$16,656.37, and the following day notice and demand was served on him. On May 2, 1946, this assessed tax liability was transferred to the Collector in San Francisco and, on May 9, 1946, the Collector in San Francisco placed this liability on his current tax list. On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,656.37 to be recorded by the County Recorder of Alameda County. When this case was heard the outstanding balance of this assessed and recorded tax liability was \$8,068.86 exclusive of interest from the date of notice and demand. (R. 50-51.)

On May 14, 1945, the Collector of Internal Revenue for the Second District in New York received the assessment list carrying assessments of 1942 income and excess profits tax liabilities against Agnes B. Graham, as transferee of Kincaid Company, in the amount of \$16,773.02. On May 21, 1945, a notice and

demand for payment was served on her, but previously on May 2nd, these assessed tax liabilities were transferred to the Collector in San Francisco and they were placed on his current tax list on May 9th. On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,773.02 to be recorded by the County Recorder of Alameda County, and that was the outstanding balance when this case was tried. (R. 51-52.)

The Commissioner of Internal Revenue in December of 1946 assessed withholding and federal insurance contributions taxes, penalties and interest for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946 in the aggregate amount of \$542,706.95 against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company. On December 6, 1946, the Collector of Internal Revenue in San Francisco received a telegraphic jeopardy assessment list carrying these assessments. On December 9, 1946, the Collector served a notice and demand for payment; and, on the same day, caused a notice of lien covering these taxes to be recorded by the County Recorder of the County of Alameda. The outstanding balance of this tax liability was \$365,040.50, exclusive of interest on the sum of \$337,918.01 from the date of notice and demand, when the case was heard. (R. 52.)

The Commissioner of Internal Revenue in July of 1949 assessed federal income taxes for the years 1945 and 1946 against Warren C. Graham and Agnes B. Graham in the amount of \$1,139,375.86. On August 1,

1949, the Collector in San Francisco received the assessment list carrying that assessment and, on August 1, 1949, and on September 2, 1949, the Collector served notices and demands on them for payment of this liability. On December 12, 1949, the Collector caused a notice of tax lien in the amount of \$1,139,375.68 to be recorded by the County Recorder of Alameda County and that amount was unpaid when this case came to trial. (R. 53.)

The above-described federal tax liabilities are asserted as liens against the interests of Warren C. Graham and Agnes B. Graham in the property which is fully described in the findings (R. 53-55) but is generally referred to as the residence at 6035 Wood Drive, Oakland, California.

This property is subject to a reserve for public utilities, five feet in width and running across the length of the property, which reserve was granted to the City of Oakland. (R. 55.)

Mr. and Mrs. Graham do not claim any present interest in the above property and they deny having any interest therein when the federal tax liabilities arose. (R. 55.)

Legal title to this property is in the name of Catherine Young Cobb who was living in Oakland with her husband when this action was commenced. A deed transferring this property from Frank Hansen, a single man, to Catherine Young Cobb, a married woman, was recorded in Alameda County on May 28, 1948. Also a deed transferring this property from

Warren C. and Agnes B. Graham, his wife, to Frank Hansen, a single man, was recorded in Alameda County on December 7, 1946, and a deed transferring this property from Carroll McKee and Opal Leota McKee, his wife to Warren C. Graham and Agnes B. Graham was recorded on October 16, 1945.¹ (R. 55-56).

The conveyance of this property from the Grahams to Frank Hansen was a sham and for the purpose of avoiding and defeating federal tax liens. The Grahams did not intend to divest themselves of the beneficial interest in the property and Frank Hansen did not intend to take the beneficial interest but received the title to the property and held it for the Grahams. (R. 56.)

Frank Hansen (who was made a defendant under the second amended complaint) was employed by the Graham Ship Repair Company and in the years 1945 through 1948 was closely associated with Graham. Other property owned by Graham had been transferred to Hansen and in previous court proceedings these transfers had been set aside. Frank Hansen's deposition was taken and was received in evidence along with various other exhibits. The deposition shows in regard to the conveyance of the property here that the purpose of the transfer to Hansen was to avoid federal tax liens. (R. 56-57.)

The District Court found that the conveyance of such property by Hansen to Catherine Young Cobb

¹The record gives 1946 but Exhibit 9 from which that information is taken shows 1945.

was a sham and made to conceal the Grahams' interest herein, and in any event such transfer was no more than a gift. (R. 57.)

The District Court also made findings as to liens of the State of California, Alameda County and the City of Oakland (R. 57-60), but these are not involved in this appeal.

Upon the basis of the above facts, the District Court made the following conclusions of law:

The liens of the United States arising out of assessments made against Warren C. Graham and Agnes B. Graham for 1942 income and excess profits taxes, for 1945 and 1946 withholding and insurance contribution taxes, and 1945 and 1946 income taxes arose when the Collector received the various assessment lists covering such assessments on March 26, 1945, May 14, 1945, December 6, 1946, and August 1, 1949, respectively. When these liens arose they attached to all property and rights in property owned by the Grahams and to all of their after-acquired property and were good against all persons except mortgagees, pledgees, purchasers and judgment creditors. None of the claimants here comes within these four categories and, in any event, the liens of the United States, which arose in 1945 and 1946, were recorded before the property here was deeded to Catherine Young Cobb and thereafter such liens were good even against the four classes named. (R. 61.)

The federal tax liens that arose on March 26, 1945, and May 14, 1945, attached to the property here in-

volved when that property, by deed recorded October 16, 1945, was acquired by Warren C. Graham and Agnes B. Graham. The federal tax liens of December 6, 1946, and August 1, 1949, attached to this particular property when they arose. (R. 61-62.)

The United States of America, the State of California, the County of Alameda and the City of Oakland are entitled to judgments on their liens in the following order which shall constitute the priority of the liens (R. 62):

(a) In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from March 26, 1945, until paid;

(b) In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from May 14, 1945, until paid;

(c) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per cent per annum on the sum of \$337,918.01 from December 1, 1946, until paid.²

The conveyance from the Grahams to Frank Hansen and the conveyance from the latter to Catherine Young Cobb were complete shams and were frauds on the creditors of Warren C. Graham and Agnes B.

²After the above items were given priority, the District Court then set out (R. 62-63) the order in which other claims could be allowed but due to the size of those allowed the United States we need not consider them here.

Graham. These conveyances are set aside and the property here involved is to be sold by the United States Marshal for the Northern District of California free and clear of these conveyances and any other encumbrances except the reservation for public utilities granted to the City of Oakland. The proceeds of this sale, after deducting the Marshal's costs and commission, are to be applied in payment of the lien claims in accordance with their respective priorities as set out above. Any amounts so paid will be credited against the above judgments. (R. 63-64.)

Judgment in accordance with the District Court's conclusions of law was entered on September 14, 1955, and on the same day a decree of foreclosure and order of sale were also entered. (R. 65-72.) Upon application of the United States for leave to correct an oversight and omission in the decree of foreclosure and order of sale, the District Court ordered on July 2, 1956, that the decree be amended in the manner set forth in the motion.³ (R. 235-236.)

³The Government's motion merely requested that the decree of foreclosure and order of sale previously entered be amended by adding—

It is further ordered, adjudged and decreed that the liens of the County of Alameda are cancelled and all claims of the auditor, assessor and tax collector of said County of Alameda against the subject real property for taxes, penalties, interests and costs insofar as asserted by said County and its said auditor, assessor and collector are set aside, cancelled and released.

SUMMARY OF ARGUMENT.

1. The District Court found that the Oakland residential property involved here was owned by Mr. and Mrs. Graham, two of the appellants here, and was subject to liens which arose as a result of tax assessments against them for several years. It therefore entered a decree foreclosing all of these liens and ordering sale of the property for the purpose of satisfying the Government's tax claims. But, as appellants devote most of their argument to an attack on the 1942 taxes, it is important to note at the outset that, although the District Court ordered those taxes paid first from the sale proceeds, it designated as the next claim to be given priority the claim for withholding and federal insurance contributions taxes for 1945 and 1946 assessed against the Grahams in their individual capacity; and such claim is greatly in excess of the amount realizable from the sale. Thus, even if the claim for 1942 taxes is not upheld here, the Government will be entitled to recover the entire amount of the sale proceeds.

2. In regard to the 1942 taxes assessed against the Grahams as transferees, appellants contend that the assessment was invalid and, in support of such contention, offered to prove (1) that they were not "deed transferees" and (2) that they did not receive the required statutory notice, designated as the 90-day letter. We submit their offer was properly rejected (1) because one may be a transferee within the statute without having received any deed to the distributed assets, and (2) because proof of actual receipt of a

0-day letter is not necessary since the only statutory requirements are that the Commissioner mail such a notice and that he wait 90 days before making an assessment against the person designated as a transferee.

There is nothing here to indicate that the prescribed statutory procedure for making assessments was not followed. Moreover, as the testimony and documentary evidence show that assessments lists carrying the assessment of the 1942 taxes were received by the proper official and notice and demand were then served on both of the Grahams, the statutory requirements for bringing the resulting liens into existence were also met.

In upholding the 1942 tax assessments and the resulting liens, the District Court called attention to the prior suit brought in the Southern District of California to foreclose liens which arose as a result of the same tax assessment against the Grahams and stated that the 1942 tax assessments had been held valid in that suit. The validity of such assessments and resulting liens is also shown in the District Court's findings set out in the record on appeal to this Court and the same record shows that a judgment was allowed the Government for any unpaid taxes remaining after distribution of the proceeds from the sale ordered by the District Court in that suit. In view of the findings and the judgment in that case, we submit that the appellants are not in a position to object to the 1942 tax assessment in this case. Furthermore, although Mr. Graham has paid about half of the 1942

taxes assessed against him, he has never filed a refund claim or taken any steps to have the assessment considered in proceedings allowed by Congress for such purpose.

3. The District Court found that the alleged transfer of the Oakland property by the Grahams to Hansen was a sham and made to defeat the tax liens. Such finding is amply supported by statements of Hansen and a revenue agent showing that the Government was investigating the Grahams' tax matters when the alleged transfers were made and that they were trying to avoid the payment of their taxes. As the Grahams purchased the Oakland property a few months after the 1942 tax assessments were made in 1945 and also held it when the withholding taxes were assessed for 1945 and 1946, on December 6, 1946, it is obvious that the liens arising from such assessment attached to that property and are valid.

The District Court found further that the transfer of the Oakland property by Hansen to Mrs. Cobb, another appellant here, was a sham and made for the same purpose as the transfer to Hansen. But the District Court explained that in any case the transfer could be no more than a gift and as a donee Mrs. Cobb was in no better position than the donor. Thus it is evident that she took subject to the tax liens which came into existence in 1945 and 1946.

4. Appellants also contend that the collection waivers signed by the Grahams were signed under duress and that, if their contention is correct, the waivers can be given no effect and that this suit is

arred, but their contention is not supported by the law or the facts. Although they do not indicate that this point should be limited to the 1942 tax collection, that is necessarily so for the waivers covered only 1942 taxes. Moreover, since the assessments for the other taxes involved here occurred less than six years before this suit was filed, the suit was timely as to those taxes and no waivers were required as to them.

Appellants' assertion that the waivers were given under duress is not supported by the evidence for it shows that they were signed voluntarily and without threats or promise of any reward. Consequently the waivers should be given effect and when that is done it is of course apparent that the suit was also timely as to the 1942 taxes. That was undoubtedly the opinion of the District Court but in view of the issues here it was not required to make any special findings as to the waivers. The rule of procedure relative to findings, to which appellants refer, was made in order that the appellate court, which is not a trier of facts, will always have before it the specific grounds on which the trial court's decision is based. But in this case the District Court did make specific findings and there can be no doubt as to the basis of its decision. Thus there has been sufficient compliance with the rule.

ARGUMENT.

I.

INTRODUCTORY STATEMENT AS TO THE DISTRICT COURT'S
DECREE ORDERING SALE OF THE PROPERTY TO WHICH
TAX LIENS HAD ATTACHED AND DESIGNATING THE
ORDER FOR PAYMENT OF TAX CLAIMS OUT OF THE SALE
PROCEEDS.

This suit was brought by the United States under 1939 Code Section 3678 (Appendix, *infra*) to enforce tax liens which it claimed had arisen as a result of several assessments made against Warren C. Graham and his wife Agnes B. Graham. After the hearing, at which testimony was taken and documentary evidence introduced, the District Court found that the asserted liens were valid and had attached to the Oakland residential property purchased by the Grahams in October 1945. Thus the District Court entered a decree foreclosing all of the federal tax liens. We call attention to these findings and the decree at the outset since appellants' brief is devoted primarily to points bearing on the 1942 income and excess profits taxes assessed against the Grahams as transferees of the Kincaid Company. Certainly, in view of appellants' attack on the 1942 tax claim, it should be noted that, although the District Court gave priority to the liens arising from the assessment of the 1942 taxes and ordered that they be paid first, the next tax claim to which the court gave priority was the claim assessed against the Grahams in their individual capacity for withholding and federal insurance contribution taxes for 1945 and 1946 in the amount of \$365,040 for taxes plus \$190,841.17 for interest. (R. 61-62, 68-70.) As the

claim last referred to is greatly in excess of the amount realizable from the sale of the Oakland property,⁴ it is evident that, even if the 1942 taxes are eliminated, the claim for the years 1945 and 1946 will completely exhaust the fund available for payment. Consequently we maintain that the Federal Government will be entitled to receive the entire amount of the sale proceeds, above costs, even if this court should agree with the appellants' first contention (Br. 15-16) that the transferee assessments against Mr. and Mrs. Graham for 1942 taxes were invalid, and also if this court should agree with the appellants' second contention (Br. 17-19) that this suit was untimely insofar as it involves the 1942 taxes. We do not of course concede the correctness of appellants' contentions and shall indicate in Points II and IV why we think the District Court properly rejected them although we do not consider it necessary that the District Court be sustained on these points in order for the Government to recover here.

As it may not be readily discernible from appellants' argument, we also wish to point out here that the appellants did not question the validity of the assessment of the 1945 and 1946 taxes, referred to above, in the District Court (R. 81-82), nor do they question it here. Thus it appears their only basis for objecting to the foreclosure of the liens arising out

⁴The record does not show what has been or will be received from the sale of the Oakland property but, as Mr. Graham testified (R. 145) that he paid about \$33,000 when it was purchased in October 1945, it is apparent that the sale proceeds are insufficient to pay this tax claim for 1945 and 1946 and the allowable interest thereon.

of the assessments for the years subsequent to 1942 has been that the property involved here was not owned by the Grahams at the time that the assessments were made and when, according to the District Court's findings, valid tax liens attached to such property. That contention is set forth in their third point (Br. 19-22) and was properly rejected by the District Court, as we shall show in our Point III.

II.

THE ASSESSMENT OF THE 1942 INCOME AND EXCESS PROFITS TAXES WHICH WAS MADE AGAINST MR. AND MRS. GRAHAM, AS TRANSFEREES, WAS VALID AND CANNOT BE ATTACKED IN THIS SUIT.

As already indicated, appellants' principal contention here appears to be that the assessment of the 1942 taxes against the Grahams as transferees was invalid. However, there is nothing to indicate any irregularity in the procedure followed by the Commissioner or other internal revenue officers. The record shows that the assessment list carrying the assessment of the 1942 taxes against Mr. Graham as transferee of the Kincaid Company was received on March 26, 1945, and notice and demand for payment was served on him the following day; and the assessment list carrying the assessment of such taxes against Mrs. Graham as transferee was received on May 14, 1945, and notice and demand was served on her May 21, 1945. (R. 50-51.) There is a presumption that the Commissioner, as a public officer, performed his duty in making these assessments. *United States v. Chemical Foundation*, 272 U.S. 1, 14-15; *Austin Co. v. Commissioner*, 35 F.

1910, 912 (C.A. 6th); *Harrington v. Lucas*, 41 F. 2d 29 (C.A.D.C.); see also *Phillips v. Commissioner*, 33 U.S. 589. In view of that presumption such assessments are *prima facie* correct and are customarily given the force of a judgment. *Bull v. United States*, 95 U. S. 247, 260; *Citizens Nat. Trust & S. Bank of Los Angeles v. United States*, 135 F. 2d 527 (C.A. 9th).

Moreover, it is evident from the facts just stated that the two requirements for establishing tax liens were met here. See 1939 Code Sections 3670 and 3671 (Appendix, *infra*). Thus the Government had tax liens, because of these assessments, from the last date indicated above, and that is what the District Court held. (R. 61.) Also such liens not only attached to all property owned by the Grahams when they first came into existence but to any after-acquired property including the Oakland residential property purchased by the Grahams in October 1945. (R. 56, also see Ex. 9.)

In attempting to show otherwise, appellants made an offer of proof which, upon the Government's objection, was properly rejected by the District Court. (R. 188-189.) Such offer of proof was to show (1) that the Grahams were not "deed transferees" and could not for that reason be validly assessed as transferees, and (2) that the Grahams never received any 30-day letter notifying them that they owed taxes as transferees. We submit that the appellants could not help their case by proving that they were not "deed transferees" for the term "transferee" is defined by

1939 Code Section 311 (f) (Appendix, *infra*) as including a distributee and to be a distributee it is not necessary to show either that one has received a deed to any assets or that any formal procedure has been followed.

Appellants' offer to prove that the Grahams never received a 90-day letter also falls short of what is required in order to establish their contention that the transferee assessment was invalid. The Commissioner is required to mail a notice advising the transferee of the tax to be assessed against him in that capacity and is prohibited from making the proposed assessment for a period of 90 days. 1939 Code Sections 272(a) and 311(d) (Appendix, *infra*). But there is no statutory provision or rule of law requiring the Commissioner to prove that the required notice was received by the transferee and appellants have not offered to prove, and doubtless could not prove, that a notice was never mailed to the Grahams.

Not only does it appear from the testimony and the documentary proof introduced in evidence that the prescribed statutory procedure was followed but it is doubtful, as the District Court pointed out at the hearing, whether the Grahams can attack the assessment of 1942 taxes in this suit. In this connection, the District Court indicated that its views were in accord with those expressed in *Commercial Credit Corp. v. Schwartz*, 126 F. Supp. 728 (E.D. Ark.). In that case a creditor, which had commenced a suit to foreclose a real estate mortgage, named the taxpayers, who were the mortgagors, and the United States as defend-

ants; and after the case was removed to the federal court the taxpayers filed a motion asking permission to amend their answer in such a way as to attack the validity of the assessment on which the Government's lien was based. In denying the motion, the District Court stated (pp. 729-730) that the taxpayers were attempting to receive a judicial review of the Commissioner's assessment without first exhausting remedies provided by Congress and that what they were doing amounted to a collateral attack on the assessment which should not be allowed.

The same conclusion could also be reached here, particularly as to Mr. Graham who has paid approximately one-half of the taxes involved in this transferee assessment (R. 51) but has not filed any claim for refund. Furthermore, neither of the Grahams contested the Government's suit to foreclose a tax lien which was attached to property of the Grahams located in San Luis Obispo County and which arose out of the same assessment for 1942. See *United States v. Graham*, 96 F. Supp. 318 (S.D. Cal.), affirmed *sub nom. State of California v. United States*, 195 F. 2d 530 (C.A. 9th), certiorari denied, 344 U.S. 831. During the hearing in the instant case, the District Court referred to this prior suit and stated (R. 189) that the assessment of these 1942 taxes had been held valid although the decision therein did not discuss the point.⁵ However, it will be seen from the record filed

⁵Counsel for appellants admitted at the hearing (R. 189) that it was true that this assessment had been held valid in the prior suit as to Mr. Graham but not as to Mrs. Cobb, who was not a party to that suit.

upon the appeal in the prior suit that there were not only specific findings indicating the validity of the liens arising out of the 1942 tax assessments against the Grahams as transferees, but the District Court entered a decree foreclosing those and other tax liens and not only ordered a sale of the property to which those liens had attached but also stated that the United States could have judgment against the Grahams for any tax claims remaining unpaid after distribution of the proceeds from the sale. (Record on appeal in prior suit, pp. 87-88, 94, 105-111.) We submit that in view of those findings and that judgment, which was entered only about four months before the complaint was filed in the instant suit, the validity of the 1942 tax assessments and the resulting liens had been established and could no longer be questioned when this suit was filed.

Appellants cite a number of cases (Br. 6-13) but none of them involves the actual situation which we have here, and some of them merely state general principles relative to assessments such as in the case of *In re Holdsworth*, 113 F. Supp. 878 (N.J.), where it was held that the creation of a valid lien under Sections 3670 and 3671 was dependent on three conditions, namely, (1) the receipt by the Collector of Internal Revenue of an assessment list certified by the Commissioner, (2) a demand for payment by the Collector, and (3) neglect or refusal of the taxpayer to pay. It is of course apparent from the evidence produced by the Government in this case that these three requirements were met here.

In other cases appellants refer to, such as *Maxwell v. Campbell*, 205 F. 2d 461 (C.A. 5th), and *Ventura v. Consolidated Oil Fields v. Rogan*, 86 F. 2d 149 (C.A. 5th), certiorari denied, 300 U.S. 672, it is apparent that objections based on irregularities in making assessments were not only made timely but were made under circumstances quite different from those here. Thus, in the *Ventura* case, the taxpayer sought an injunction to prevent collection of a tax by distraint and in granting such relief this Court held that the letter which the taxpayer had received from the Treasury Department was not the notice of deficiency required by the statute but also held that, even if it were, the assessment would still be invalid because the evidence showed that it had been made before the expiration of the 60 days, the period during which an assessment was prohibited by the statute then applicable.

It should also be apparent that the appellants' quotations (Br. 14-16) from the House and Senate Committee Reports on 1954 Code Section 7403 (which is the same as 1939 Code Section 3678) do not strengthen their position. Such reports pointed out that it had been proposed in the House to amend the law by providing that the assessment of the tax on which a federal lien is based shall be conclusively presumed to be valid in an action to foreclose a lien but that the proposed amendment had been omitted. In explaining this omission, the reports stated further that the elimination of the proposed provision was not designed to change the effect under existing

law given to the assessment in such adjudication. As conclusive presumptions are not favorably accepted, we can surmise why the proposed provision was omitted but, whatever the reason for its proposal and rejection, the proposal has no effect on this case.

III.

THE DISTRICT COURT CORRECTLY HELD THAT THE ALLEGED TRANSFER OF THE PROPERTY INVOLVED HERE WAS A SHAM AND DID NOT PREVENT THE FEDERAL TAX LIENS FROM ATTACHING THERETO.

As we have just shown, the liens resulting from the assessment of the 1942 taxes arose in 1945, a few months before the Grahams purchased the Oakland residential property involved here, and such liens attached to that property when it was acquired. Realizing this, the appellants have attempted to defeat the foreclosure of the liens for 1942 taxes by contending that they were based on an invalid assessment, and we have just answered that contention. But, as to other liens resulting from the uncontested assessment of taxes for 1945 and 1946, appellants have found another ground for objecting to the foreclosure of such liens and that is that the Grahams had no interest in the Oakland property which the District Court ordered sold to satisfy the Government's liens.

As to the liens for the 1945 and 1946 taxes just referred to, the District Court found that they arose on December 6, 1946 (R. 52, 61), and the appellants agree. (Br. 19.) But they assert that the Grahams

gave the property to Mrs. Cobb, another appellant here, and that this was accomplished by transferring such property to Frank Hansen in trust for Mrs. Cobb under an agreement allegedly executed on August 1, 1946. It is further contended that the deed transferring such property to Hansen was drawn on August 7, 1946, and recorded on December 7, 1946, and that subsequently, on May 28, 1948, Hansen transferred the property to Mrs. Cobb. (Br. 20.) Those contentions are based to some extent on the testimony of Mr. and Mrs. Graham and Mrs. Cobb. (R. 111-112, 126-127, 141-142, 177-183, 192, 196-198.) But it will also be seen that much of their testimony is vague and is in direct conflict with Hansen's testimony which was accepted by the District Court. In rejecting appellants' version of their transactions, the District Court found as to the first transfer that (R. 56)—

8. The conveyance of the above-described real property from Warren C. Graham and Agnes B. Graham to Frank Hansen was a sham. The transfer was for the purpose of avoiding and defeating Federal tax liens. Warren C. Graham and Agnes B. Graham did not intend to divest themselves of the beneficial interest in the property and Frank Hansen did not intend to take the beneficial interest. Frank Hansen received title to the property and held title to the property for Warren C. Graham and Agnes B. Graham.

Thus it is apparent from the District Court's finding that Hansen, who was allegedly holding title to the Oakland property when the 1945 and 1946 tax liens became effective on December 6, 1946, actually

did not take the beneficial interest in such property and it was never intended that he should. This finding is based on Hansen's deposition which, as the court stated (R. 56-57), was received in evidence as an exhibit.⁶ It will be seen that Hansen stated that he was told that Graham wanted him to take this property because "the Internal Revenue was breathing hard down his neck", and in agreeing to do so he understood that he was to have no beneficial interest in the property and that the purpose of such transfer was to avoid federal tax liens. (See pp. 7-10 of Ex. 10, also see R. 57.)

Hansen's testimony was corroborated by a deputy clerk who was in charge of seizures and sales for the Internal Revenue Service and who testified that he was working on the Grahams' tax liabilities in 1946, that he contacted Mr. Graham as early as the first week in August of that year and that subsequently he made several telephone calls to Mr. Graham. (R. 213-214.)

It should also be noted that the Grahams continued to live in the Oakland residence after the alleged conveyance, at least until 1949 or 1950. (R. 125, 202.) Furthermore, when the Grahams conveyed this residence to Hansen they were not solvent for although they estimated their net worth at \$300,000 (R. 113) that did not include the Government's claims for various kinds of taxes for 1942, 1945 and 1946 which with interest was greatly in excess of a million dollars

⁶The deposition is Exhibit 10 and although not contained in the printed record is part of the record on this appeal.

and a large part of these taxes was already a debt owed to the Government by the time of the alleged transfer in August 1946. (R. 51-53, 62-63.) Thus counsel for appellants is in error in stating (Br. 20) that there was no known liability outstanding against the Grahams when they made "their gift" of the residence to Mrs. Cobb.

As to the transfer of the Oakland property to Mrs. Cobb in May 1948, the District Court found (R. 57):

The conveyance of the above-described property from Frank Hansen to Catherine Young Cobb was a sham and made for the same purpose as was the conveyance from the Grahams to Hansen, namely, to conceal the Grahams' interest therein. In any event the transfer to Catherine Young Cobb was no more than a gift.

Appellants object (Br. 19) to this second finding because it was stated in the alternative but we submit that the court's meaning is clear. Thus, while it first found specifically that the conveyance from Hansen to Mrs. Cobb was a sham and was made for the same purpose as the conveyance from the Grahams to Hansen, it then in effect stated that even if the conveyance was treated as a valid transfer it would still be no more than a gift. In other words, long before the alleged conveyance to Mrs. Cobb was executed in May 1948 the Government acquired admittedly valid liens for 1945 and 1946 withholding taxes, as well as liens for the 1942 taxes, and as a donee Mrs. Cobb necessarily took subject to such liens. This cannot be disputed for a donee has never been given a preferred

status like that accorded to mortgagees, pledgees, purchasers or judgment creditors under 1939 Code Section 3672 (Appendix, *infra*), but is in the same position as the donor.

It is apparent, as we have already indicated, that appellants are attempting, even under their third point (Br. 19-22), to show that the principal liens involved here are those arising out of the 1942 tax assessments. Thus they assert (Br. 22) that the District Court's finding relative to the fraudulent character of the transfer "was based on the erroneous assumption that the transferee tax lien for 1942 taxes against the Kincaid Company was valid". But that is obviously not correct for the District Court's finding is dependent in no way on whether the 1942 tax lien was valid. Indeed, as we have pointed out, the Government should prevail here even though the 1942 tax liens are eliminated for the evidence shows that the Government had valid liens for 1945 and 1946 taxes greatly in excess of the sale proceeds and that the alleged transfer of the property to which such liens attached was fraudulent. Moreover, as the District Court held (R. 61), all of these liens were recorded before this property was deeded to Mrs. Cobb and was at the time of such transfer good even against the preferred classes in Section 3672.

IV.

**THE GOVERNMENT IS NOT BARRED FROM COLLECTING
ANY TAX CLAIM INVOLVED IN THIS SUIT.**

The appellants also contend (Br. 17-18) that the collection waivers which were signed by Mr. and Mrs. Graham were signed under duress and assert that, if they are correct, the waivers can be given no effect and this action is barred by the applicable statutory provisions. As the District Court did not make any specific finding as to the waivers, appellants claim further that the District Court was in error in failing to do so. We do not agree with any part of this contention.

In the first place, while appellants make it appear (Br. 18) that if they are correct in their assertion as to the waivers the whole suit would be barred, their contention must be interpreted as being directed only toward the 1942 taxes for the waivers⁷ covered only those taxes. Consequently, even if it should be held that the waivers did fail to extend the time for collecting the 1942 taxes, it is still evident that under Code Section 276 (c) (Appendix, *infra*) this suit is timely as to the other tax claims. That section provides that, where the assessment has been made within the prescribed period of limitation (and all the assessments here were within the statutory period), a suit may be filed (1) within six years after the assessment of the tax or (2) prior to the expiration of any period for

⁷The waiver signed by Mr. Graham was introduced in evidence as Exhibit 4 (R. 92) and that signed by his wife as Exhibit 6-D (R. 101-102). Both of these exhibits, though unprinted, are part of the record in this Court.

collection agreed upon in writing by the Commissioner and the taxpayer. Thus, as this suit was filed on August 17, 1951, and the 1945 and 1946 withholding and federal contributions taxes were assessed about December 6, 1946, the filing date was well within the six-year period so far as those taxes are concerned and no waiver was necessary. That is also true as to the 1945 and 1946 income taxes which were assessed in July 1949. (R. 21, 52-53.) Furthermore, as the waivers covering the 1942 taxes were signed by the Grahams and the Commissioner on November 21, 1950 (R. 92, 102), which was several months before the six-year period for this suit expired (i.e., six years from the 1945 assessment) and the waivers extended the time for collection by suit until December 31, 1951, it is also evident that this suit was timely as to the 1942 taxes unless, as appellants contend, the waivers were obtained under duress; and the evidence does not support that contention.

Although Mrs. Graham testified that the revenue agent who brought her a form of waiver to sign told her that if she would sign the form "it would possibly help him [Mr. Graham] get some papers that were needed at the time for my husband's parole" from McNeil Penitentiary, she refused to sign until she went to see her husband, and she admitted that the agent did not threaten her in any way. (R. 193-195, 201-202.) Subsequently, according to one of the revenue agents who testified, Mrs. Graham signed the waiver in his presence in the San Francisco office in the fall of 1950, and he denied that he had at any

time suggested to her that her husband's parole might be held up if the waivers were not signed. (R. 214-217.)

A revenue agent from the Tacoma revenue office testified that the waiver signed by Mr. Graham was sent direct to that office from the San Francisco office, that he took the waiver to the penitentiary where it was signed by Mr. Graham in his presence on November 21, 1950, as dated, and that he then returned it to San Francisco. (R. 150-154.) His testimony is corroborated by that of the Deputy Clerk in the San Francisco office, who sent the waiver (R. 204-214) but is in direct conflict with that of Mr. Graham who claimed that the waiver was brought to him by Mrs. Graham and that he signed it on February 6, 1951, and mailed it back to San Francisco himself (R. 114-115). However, as these agents had documents with which to refresh their recollection, and were in charge of the records pertaining to the waivers, their testimony should be accepted both as to the timeliness of the waivers and also as to the manner in which they were obtained. Moreover, as the Grahams tried to indicate that his parole was being delayed, it should be noted that a parole report on Mr. Graham was forwarded by the Intelligence Unit of the Internal Revenue Service on May 28, 1951, in about a month after a request for such data was received from the parole executive in Washington, D.C., and that 30 days is the average time for such a report. (R. 220-224.)

We submit that in view of such evidence relative to the waivers the District Court undoubtedly accepted

it as valid and voluntarily given. But it was not required to make special findings as to the waivers.

In attempting to show that the District Court erred in failing to make such findings, appellants cite (Br. 17) Rule 52(a) of the Federal Rules of Civil Procedure which provides that in all actions tried without a jury, the court shall find the facts specially and shall also state separately its conclusions of law thereon. The reason for such rule is of course obvious. As the appellate court is not a trier of fact and cannot substitute its judgment for the trial court, it is necessary that the latter make findings explicit enough to convey a clear understanding of the basis of the decision and to enable the appellate court to determine the ground on which the trial court reached its decision. See *Irish v. United States*, 225 F. 2d 3, 8 (C.A. 9th), and *Maher v. Hendrickson*, 188 F. 2d 700, 702 (C.A. 7th), which hold that the ultimate test as to the propriety of findings is whether they are sufficiently comprehensive to provide a basis for decision and supported by the evidence.

The District Court did find the facts specially here and also made separate conclusions of law (R. 50-61) and its findings meet the test announced in the above cases for they are sufficiently explicit to clearly indicate the basis for its decision. Thus its failure to make a specific finding as to the waivers is not comparable to the situation in the *Irish* case in which this Court said it was unable from what the trial court had found to determine the actual basis for its decision. We do not have that difficulty here for we

know that the District Court has followed the basic requirements of the statutory provisions referred to and has found that the Government not only had valid liens for taxes involved here but had filed a timely suit for the foreclosure of such liens.

CONCLUSION.

The decision of the District Court is correct and should be affirmed.

Respectfully submitted,

CHARLES K. RICE,

Assistant Attorney General.

LEE A. JACKSON,

A. F. PRESCOTT,

LOUISE FOSTER,

Attorneys, Department of Justice,
Washington 25, D. C.

LLOYD H. BURKE,

United States Attorney,

CHARLES ELMER COLLETT,

Assistant United States Attorney.

January, 1957.

(Appendix Follows.)

Appendix.



Appendix

Internal Revenue Code of 1939:

SEC. 272. PROCEDURE IN GENERAL.

(a)(1) [as amended by Sec. 203 of the Act of December 29, 1945, c. 652, 59 Stat. 669] *Petition to Board of Tax Appeals*.—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. * * *

* * * * *

(d) *Waiver of Restrictions*.—The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

* * * * *

(26 U.S.C. 1952 ed., Sec. 272.)

SEC. 275. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

Except as provided in section 276—

(a) *General Rule.*—The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * *

(26 U.S.C. 1952 ed., Sec. 275.)

SEC. 276. SAME—EXCEPTIONS.

* * * * *

(c) *Collection After Assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

* * * * *

(26 U.S.C. 1952 ed., Sec. 276.)

SEC. 311. TRANSFERRED ASSETS.

(a) *Method of Collection*.—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this chapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees*.—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this chapter.

* * * * *

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) *Period of Limitation*.—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

* * * * *

(d) *Suspension of Running of Statute of Limitations*.—The running of the statute of limitations upon

the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 272 (a), be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter.

* * * * *

(f) *Definition of "Transferee."*—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

(26 U.S.C. 1952 ed., Sec. 311.)

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the

liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SEC. 3672 [As amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(26 U.S.C. 1952 ed., Sec. 3672.)

SEC. 3678. CIVIL ACTION TO ENFORCE LIEN ON PROPERTY.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the

Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) *Parties to Proceedings*.—All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) *Adjudication and Decree*.—The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

* * * * *

(26 U.S.C. 1952 ed., Sec. 3678.)

No. 14,965

IN THE

United States Court of Appeals
For the Ninth Circuit

WARREN C. GRAHAM and AGNES B. GRAHAM,
his wife, and CATHERINE YOUNG COBB,
Appellants,

vs.

UNITED STATES OF AMERICA, STATE OF CALI-
FORNIA, CITY OF OAKLAND and COUNTY OF
ALAMEDA,
Appellees.

On Appeal from the Judgment of the United States District Court
for the Northern District of California.

APPELLANTS' REPLY BRIEF.

SCHOFIELD, HANSON & JENKINS,
THOMAS M. JENKINS,
625 Market Street, San Francisco 5, California,
Attorneys for Appellants.

FILED

MAR 19 1957

PAUL P. O'BRIEN, CLERK

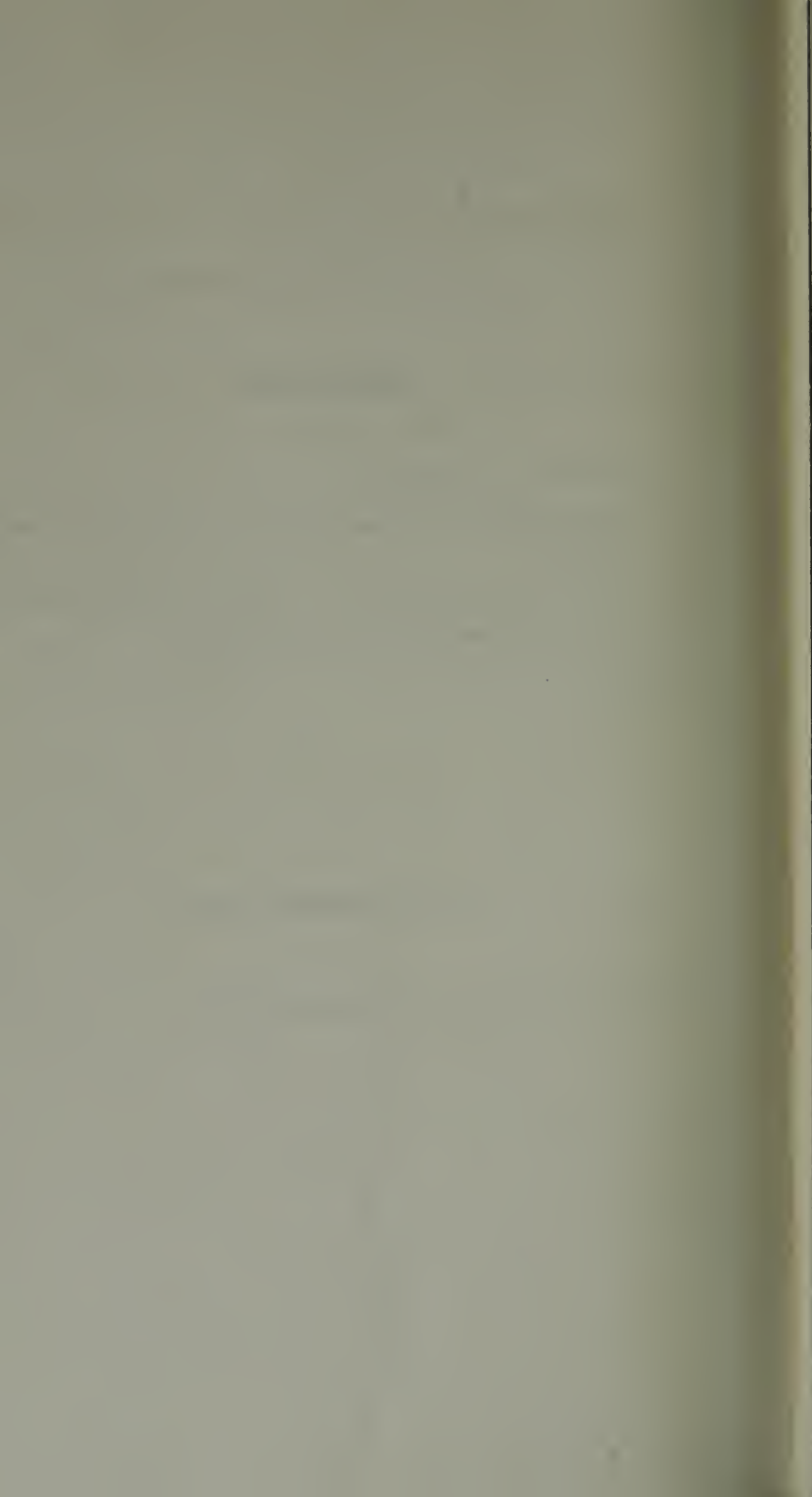


Subject Index

	Page
I. Preliminary statement	1
II. 1942 assessment of income and excess profits taxes was invalid	2
III. As 1942 taxes are invalid, lien on real property must fail	3
IV. Tax waivers were obtained under duress	4
Conclusion	5

Table of Authorities Cited

	Page
Internal Revenue Code of 1939, Section 272	2



No. 14,965

IN THE

**United States Court of Appeals
For the Ninth Circuit**

WARREN C. GRAHAM and AGNES B. GRAHAM,
his wife, and CATHERINE YOUNG COBB,
Appellants,

VS.

UNITED STATES OF AMERICA, STATE OF CALI-
FORNIA, CITY OF OAKLAND and COUNTY OF
ALAMEDA,
Appellees.

On Appeal from the Judgment of the United States District Court
for the Northern District of California.

APPELLANTS' REPLY BRIEF.

I. PRELIMINARY STATEMENT.

The Government in its brief has seen fit to state many facts completely outside the record. This is particularly true with reference to alleged other actions involving appellants (App. Brief pages 7, 12, 21) which are not before this Court and have no bearing on the issues herein.

In addition, it should be pointed out that in the main the Government has not found any authorities in support of their position, but rather seek to refute the arguments and authorities cited by appellants

ply by a restatement of facts. Some point seems to be made by the Government that the appellant Warren C. Graham had made payment of one-half of the 1942 tax liability and had failed to seek a refund which indicated in theory that he had not followed administrative requirements. It should be pointed out that no payment was made by the taxpayer and that there is no evidence in the record to that effect; that in fact collection had been effected by the Government by other means and application of such collections had been made by the taxing authorities within their own discretion to this particular liability.

II. 1942 ASSESSMENT OF INCOME AND EXCESS PROFITS TAXES WAS INVALID.

Appellants reiterate that their primary position is that the 1942 assessments levied against them was invalid by reason of the failure of the Government to send the necessary 90 day letter required by the Internal Revenue Code of 1939, Section 272, which provides:

“No assessment of a deficiency in respect to the tax imposed by this chapter . . . shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90 day period . . .”

The Government alleges at page 12 of its brief:

“There is nothing here to indicate that the prescribed statutory procedure for making assessments was not followed”.

As pointed out in appellants' opening brief, page 10, and upon reading of the record herein, pages 122, 188 and 189, it was then, and is now the position of the appellants that the prescribed procedure was not followed; that no evidence was introduced by the Government indicating that it was; that on the contrary, the only evidence was to the effect that no 90 day letter was sent. It is resubmitted that the appellant offered to prove that the statutory requirements were not met; the Court refused such offer of proof; this ousted the Court of jurisdiction and made invalid the subsequent proceedings.

**III. AS 1942 TAXES ARE INVALID, LIEN ON
REAL PROPERTY MUST FAIL.**

Appellant does not argue with the proposition of the Government that the 1945 and 1946 taxes were uncontested. Appellants position, however, is as follows:

Appellants purchased the real property in October of 1945. At that time there were no tax liens in existence. Appellants transferred property to Frank B. Hansen on August 6, 1946. At that time no tax liens existed as the 1942 assessments were invalid. The assessments for 1945 taxes were not levied until December 6, 1946. The assessments for 1946 taxes were not levied until 1947. The Court found, as indicated on page 4 of the Government's brief that:

“The transfer (to Frank Hansen on August 6, 1946) was for the purpose of avoiding and defeating Federal tax liens.”

is submitted that if no tax liens existed, then this finding of the Court with reference to sham must of necessity fail. To support the Government's position the Court would have had to have made a finding that the transfer was made to defeat tax liens not yet in existence and for a year which was not yet completed when the tax liability could not have possibly have accrued, i.e. 1946. The only evidence in the record to the effect that the appellants had a net worth of \$1000.00 on August 6, 1946, and were solvent. Appellee attempts (Appellee's Brief, page 25) to prove solvency by indicating Government's claims for taxes for 1945 and 1946. There is no evidence to indicate that part, if any, of the 1945 and 1946 had accrued at the time of the transfer in August 1946 and obviously the 1946 taxes could not have yet arisen; there is nothing in the record to indicate either claims or liens against appellants on August 6, 1946.

It is submitted that the Government's reported claim of lien for 1945 and 1946 taxes is based on a finding which of necessity must rely on the invalid 1942 assessments; that such finding must fall and that no lien can therefore exist as against the property herein.

IV. TAX WAIVERS WERE OBTAINED UNDER DURESS.

Appellant reiterates its position that the waivers obtained by appellant Warren C. Graham here during his term at McNeil Island were executed under duress; that the evidence substantiates only such a finding and

must in fact be presumed as a matter of law. The failure of the District Court to find on this point was prejudicial and merits reversal.

CONCLUSION.

The decision of the District Court should be reversed.

Dated, San Francisco, California,
March 18, 1957.

SCHOFIELD, HANSON & JENKINS,
THOMAS M. JENKINS,
Attorneys for Appellants.

